



U.S. Environmental Protection Agency

Response to Public Comments Regarding the “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs”



Photo courtesy of Florida Fish and Wildlife Conservation Commission

May 2006

Response to Public Comments regarding the “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs”

Comment Index Scheme

Commenter Identification	Author	Public Comment Docket Document ID
A	U.S. Environmental Protection Agency Office of Water Office of Wetlands, Oceans, and Watersheds Oceans and Coastal Protection Division Marine Pollution Control Branch	EPA-HQ-OW-2004-0003-0001
B	Reef Ball Foundation	EPA-HQ-OW-2004-0003-0002
C	Anonymous	EPA-HQ-OW-2004-0003-0003
C-I	*Duplicate document. Please see response to EPA-HQ-OW-2004-0003-0003 (Commenter Identification “C”).	EPA-HQ-OW-2004-0003-0004
D	b. sachau	EPA-HQ-OW-2004-0003-0005
E	Kevin Rottner	EPA-HQ-OW-2004-0003-0006
F	S.A. Kehinde	EPA-HQ-OW-2004-0003-0007
G-I	Barbara Nightingale Planning Unit Aquatic Resources Division Washington State Department of Natural Resources	EPA-HQ-OW-2004-0003-0008
G-II	Loren J. Stern Aquatic Resources Division Washington State Department of Natural Resources	EPA-HQ-OW-2004-0003-0009

H	Peggy Bowen NJ Council of Diving Clubs	EPA-HQ-OW-2004-0003-0010
G-III	Loren J. Stern Aquatic Resources Division Washington State Department of Natural Resources *Duplicate document. Please see response to EPA-HQ-OW-2004-0003-0009 (Commenter Identification "G-II").	EPA-HQ-OW-2004-0003-0011
I	Anne Newsom The Commonwealth of Virginia Department of Environmental Quality	EPA-HQ-OW-2004-0003-0012
I-I	Ellie Irons Office of Environmental Impact Review The Commonwealth of Virginia *Duplicate document. Please see response to EPA-HQ-OW-2004-0003-0028 (Commenter Identification "I-III").	EPA-HQ-OW-2004-0003-0013
I-II	Ellie Irons Office of Environmental Impact Review The Commonwealth of Virginia *Duplicate document. Please see response to EPA-HQ-OW-2004-0003-0028 (Commenter Identification "I-III").	EPA-HQ-OW-2004-0003-0014
J	Jon Dodrill Florida Fish and Wildlife Conservation Commission	EPA-HQ-OW-2004-0003-0015
J-I	Jon Dodrill Florida Fish and Wildlife Conservation Commission	EPA-HQ-OW-2004-0003-0016

	*These comments do not represent an agency-wide response but are an individual submittal based on personal review of the BMPs.	
K	Carrie Selberg Atlantic States Marine Fisheries Commission	EPA-HQ-OW-2004-0003-0017
K-I	John V. O'Shea Atlantic States Marine Fisheries Commission	EPA-HQ-OW-2004-0003-0018
K-II	John V. O'Shea Atlantic States Marine Fisheries Commission *Duplicate document. Please see response to EPA-HQ-OW-2004-0003-0018 (Commenter Identification "K-I").	EPA-HQ-OW-2004-0003-0019
L	Cindy Zipf Clean Ocean Action	EPA-HQ-OW-2004-0003-0020
L-I	Cindy Zipf and Jennifer Samson Clean Ocean Action	EPA-HQ-OW-2004-0003-0021
M	Lauren P. Milligan Florida State Clearinghouse Florida Department of Environmental Protection	EPA-HQ-OW-2004-0003-0022
M-I	Sally B. Mann Office of Intergovernmental Programs Florida Department of Environmental Protection Brian S. Barnett Office of Policy and Stakeholder Coordination Florida Fish and Wildlife Conservation Commission	EPA-HQ-OW-2004-0003-0023
N	Anonymous	EPA-HQ-OW-2004-0003-0024

O	Richard Gutierrez Basel Action Network	EPA-HQ-OW-2004-0003-0025
O-I	Richard Gutierrez and Jim Puckett Basel Action Network	EPA-HQ-OW-2004-0003-0026
O-II	Richard Gutierrez and Jim Puckett Basel Action Network	EPA-HQ-OW-2004-0003-0027
I-III	Ellie Irons Office of Environmental Impact Review The Commonwealth of Virginia	EPA-HQ-OW-2004-0003-0028
P	Barry E. Chambers International Shipbreaking Limited	EPA-HQ-OW-2004-0003-0029

List of Appendices

Appendix A: The Federal Register Notice of Availability and Request for Public Comments

Appendix B: State Artificial Reef Coordinators

Appendix C: The National Defense Authorization Act for Fiscal Year 2004

Response to Public Comments regarding
Draft National Guidance: Best Management Practices for Preparing
Vessels Intended to Create Artificial Reefs
69 Fed. Reg. 46141 (August 2, 2004)

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0001

Author Date: August 2, 2004

Author: U.S. Environmental Protection Agency, Office of Water,
Office of Wetlands, Oceans, and Watersheds
Oceans and Coastal Protection Division
Marine Pollution Control Branch

Comment # A-1:

Federal Register notice of availability and request for public comments. 69 Fed. Reg. 46141 (August 2, 2004).

Response to Comment # A-1:

The *Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs* describes guidelines for the preparation of vessels in a manner that will help ensure that the marine environment will benefit from their use as artificial reefs. A notice of availability was published in the Federal Register on August 2, 2004, commencing a 60-day comment period for public participation in the continued development of this document. The public comment period concluded on October 1, 2004. EPA will prepare a letter to the file providing responses to comments that were submitted. Submitted comments will be considered before the document is finalized.

The Federal Register notice of availability and request for public comments is included as Appendix A of today’s document. The Federal Register notice can also be accessed via the internet at <http://www.epa.gov/owow/oceans/habitat/artificialreefs/>.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0002

Author Date: August 11, 2004

Author: Reef Ball Foundation

Comment # B-1:

The Reef Ball Foundation does not believe solid polychlorinated biphenyls (PCBs) at levels at or above 50 parts per million (50 ppm) (which represent current EPA standards) should be allowed on any vessels sunk as artificial reefs. Therefore, an appropriate best management practice would be to require rejecting any vessel as a possible artificial reef if preparation to this standard is not feasible.

Response to Comment # B-1:

The narrative clean-up goal for PCBs, as presented in the BMPs, recommends removal of all manufactured products containing greater than or equal to (\geq) 50 parts per million (ppm) of solid PCBs; removal of all liquid PCBs regardless of concentration; and removal of all materials contaminated by PCB spills where the concentration of the original PCB source is \geq 50 ppm. It must be noted that liquids at greater than 50 ppm, manufactured products containing solid PCBs \geq 50 ppm, and PCB remediation waste at any concentration are regulated for disposal under 40 CFR 761. Sinking a ship containing PCBs regulated for disposal as an artificial reef is considered disposal of PCBs; PCB regulations require the proper disposal of these materials on the ship.

While the complete removal of PCB bulk product waste is a goal, these items are often difficult to identify and locate on a ship and removal may pose risks to worker safety or the removal method (thermal removal) may pose a greater risk to the environment than leaving remnants onboard. If this is the case, the interested parties can apply to EPA for a risk-based disposal approval (this option of seeking a risk-based PCB disposal approval is presented in the PCB section of the BMPs). Obtaining a risk-based disposal approval requires the applicant to demonstrate “no unreasonable risk to human health and the environment.” If EPA finds that leaving these PCB bulk product wastes on the ship will not result in an unreasonable risk to human health and the environment, then these materials may be disposed as part of the reefing. However, the BMPs do mention that the methods, approach, and level of effort for cleaning, as well as worker safety concerns, are directly dependent on the vessel’s condition and the amount of material of environmental concern that is found onboard. Vessels needing preparation that would pose potential worker safety risks and/or would be expensive to clean (including extensive removal of items containing regulated levels of PCBs) may not be good candidates for reefing.

Comment # B-2:

Short term studies (Such as the South Carolina studies) that have shown limited short term risk for higher PCB levels in the marine environment fail to account for long term hazards associated with PCB contamination of aquatic environments and possible concentration of toxins by marine life.

Response to Comment # B-2:

The study referred to in the comment has significant limitations including few finfish samples and sampling that was not random, in addition to minimal detail on sample preparation and analytical methods. EPA is not aware of any other short- or long-term studies, with the exception of a study that involves a deep-water sinking exercise. Results

from that study have not been submitted to the Agency for review. Currently, EPA has issued one PCB disposal approval to sink a vessel as an artificial reef. EPA and the applicant(s) are in the process of developing a long term monitoring plan involving both pre- and post-sinking monitoring for PCBs. Any disposal approval issued for artificial reefing will include pre-sinking monitoring and long term post-sinking monitoring.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0003

Author Date: August 11, 2004

Author: Anonymous

Comment # C-1:

It really not necessary to remove the caulk from these ships. The threat is insignificant

Response to Comment # C-1:

The commenter provides no data to support the commenter assertion that there is no need to remove any PCB-containing caulk from a vessel because it poses no threat. When Congress passed the Toxic Substances Control Act of 1976 (PL-580), it recognized the significant detrimental impact that PCBs can have on human health and the environment by prescribing specific provisions for regulation of PCBs as a hazardous substance, including banning production of PCBs by January 1, 1977.

Given the potential for releases of PCBs to have long-lasting significant impacts on human health and the environment, it is important to properly characterize releases that may result from the reefing of vessels, and the risk that these releases may pose to humans who consume fish that will colonize and/or feed in the vicinity of these vessels as reefs.

Comment # C-2:

and the 50ppm rule is random.

Response to Comment # C-2:

Given that the PCBs in PCB bulk product waste are tightly bound within the product matrix, EPA believes that 50 ppm is an appropriate lower limit for PCB bulk product waste (see 63 FR 35411). The PCBs are expected to leach out of the matrix more slowly than PCBs from other materials. The relative leachability should hold in an aqueous environment as well as a terrestrial environment.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0004*

Author Date: August 11, 2004

Author: Anonymous

*Duplicate document. Please see EPA-HQ-OW-2004-0003-0003.

Comment # C-I-1:

It really not necessary to remove the caulk from these ships. The threat is insignificant and the 50ppm rule is random.

Response to Comment # C-I-1:

This is a duplicate comment. Please refer to previous response for EPA-HQ-OW-2004-0003-0003.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0005

Author Date: August 10, 2004

Author: b. sachau

Comment # D-1:

tHIS RUSH TO JUDGMENT IS A SCAM FOR PROFITEERS. They are still reseaching whether this is an environmentally safe thing to do and meanwhile the junk ship owners are dying to get this passed before that research even comes in, and who even knows if we have truly independent people doing this research or people who are paid off by junk ship owners.

Response to Comment # D-1:

It is true that research directed at the impacts that sinking vessels may have on the marine environment and human health is ongoing. More specifically, a risk assessment is underway to determine whether leaving materials containing regulated levels of PCBs on vessels will have “no unreasonable risk of injury to human health and the environment.”

The guidance provided in the BMPs is not dependent on the findings of that risk assessment. Further, the PCB section of the guidance document has been written so that it addresses the PCB regulations specifically, allowing for the flexibility of those regulations to be responsive to any research results that arise. However, if results from sound research and studies yield information contrary to any of the information presented in the best management practices guidance, EPA will modify this guidance document to reflect those findings.

Comment # D-2:

I personally do not want the ocean turned into a junkyard for old ships. i think old ships should be recycled and reused.

Response to Comment # D-2:

Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The BMP guidance discusses the vessel management option of artificial reefing.

The use of this guidance will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs. The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources.

This guidance document describes appropriate vessel preparation that could help achieve the benefits of an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in the BMP guidance, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

Comment # D-3:

I think junk ship owners are trying to jam this down america's throat befoore the research is in. The management option here seems to be its junk - let's line our oceans with this junk, which is not safe or sound.

Response to Comment # D-3:

Section 3516 of the National Defense Authorization Act for Fiscal Year 2004 requires that MARAD and EPA jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. Note that EPA chaired an interagency workgroup and developed the draft BMP guidance document in response to MARAD's urgency to identify another potential management option for their decommissioned vessel fleet.

It is beyond the scope of the BMP guidance to provide a decision process to determine the management option for obsolete and decommissioned military and commercial vessels. The specific application of this guidance document is for preparation of vessels when implementing the management option of creating an artificial reef.

As stated in the guidance document, artificial reefs should be developed such that they enhance marine resources and benefit the marine environment. For further discussion, please refer to the preceding response (*Response to Comment # D-2*).

Comment # D-4:

IO am sick of profiteers looking to escape the cost of what they do - the costs of getting rid of their own junk but instead destroying america with it.

Response to Comment # D-4:

The draft BMP guidance only addresses environmental impact and protection issues. The costs associated with this particular vessel management option will vary according to a given vessel-to-reef project. Although the best management practices in our guidance were developed independent of specific costs associated with clean-up, the narrative clean-up performance goals in this document can be used as a basis for estimating the cost for appropriate vessel preparation prior to reefing. The methods, approach, and level of effort for clean-up, as well as worker safety concerns, are directly dependent on the vessel's condition and the amount of materials of environmental concern that are found onboard. Vessels where clean-up could pose potential worker safety risks or could incur high costs may not be good candidate vessels for reefing.

In order to determine the estimated cost to prepare a specific vessel for use as an artificial reef, the narrative clean-up performance goals, along with the vessel preparation best management practices, can be used to scope the volume of work to be accomplished based on a detailed ship-check and implementation of a representative PCB sampling protocol. There is wide variability of ships and associated kinds and amounts of material found on a particular ship, as well as wide variability of remediation and disposal costs in different geographical locations within the U.S.

As stated in the guidance document, artificial reefs should be developed such that they enhance marine resources and benefit the marine environment. For further discussion, please refer to *Response to Comment # D-2*.

Comment # D-5:

I note that environmental groups were the last on the list of those consulted about this anti environmental measure. The profiteers came first.

Response to Comment # D-5:

An interagency workgroup, chaired by EPA, was established to develop this guidance document. The workgroup included representatives from the EPA, U.S. Coast Guard, U.S. Navy, MARAD, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and the U.S. Fish and Wildlife Service.

EPA also contacted a number of environmental groups, as well as state agencies, state artificial reef coordinators, and any private industry group that has approached EPA or MARAD regarding vessel-to-reef projects, to notify them of the Federal Register publication that detailed how to access the document and submit comments.

On August 2, 2004, EPA published a notice of availability in the Federal Register, commencing a 60-day comment period. The final BMP guidance document incorporates revisions that were made in response to the public comments received in addition to the lessons learned from recent and ongoing vessel-to-reef projects.

Comment # D-6:

The only thing allowed with old junk ships should be re-use. cut it up into reusable sections and reuse it. America should not have junk ships pushed on it by shipping profiteers looking for the least costly way to make more money for their own pockets.

Response to Comment # D-6:

For further discussion in response to comments pertaining to management options, project costs, and driving factors for the development of this guidance document, please refer to *Response to Comment #s D-3, D-4, and D-5*.

Comment # D-7:

there is absolutely no rush to judgment on this. public comment on this national question should be extended to 90 days at a minimum, although i favor six months. i also think all environmental groups should be notified of this attempt to rush to judgment, which seems like a scam pushed by junk ship profiteers.

Response to Comment # D-7:

Please refer to *Response to Comment # D-5*.

b. sachau
15 elm st
florham park nj 07932

rodney - i would appreciate congress looking into this fast track movement to make america's oceans filled with junk ships

Docket ID: EPA-HQ-OW-2004-0003. “ <i>Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.</i> ” 69 Fed. Reg. 46141 (August 2, 2004).
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<p>Public Comment</p>

<p>Docket Document ID: EPA-HQ-OW-2004-0003-0006</p>
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<p>Author Date: August 11, 2004</p>
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<p>Author: Kevin Rottner</p>

Comment # E-1:

This is a FANTASTIC PROGRAM. Where can I get more info about this in my local area Los Angeles California ??

Response to Comment # E-1:

General information about Navy and MARAD's artificial reefing program can be found at <http://peoships.crane.navy.mil/reefing/default.htm> and www.marad.dot.gov/programs/index.html, respectively. Many coastal states have artificial reef programs, and information on local vessel-to-reef programs can be obtained by contacting the appropriate offices of your local and state government.

Information for state artificial reef coordinators is included as Appendix B of today's document.

Docket ID: EPA-HQ-OW-2004-0003. <i>"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."</i> 69 Fed. Reg. 46141 (August 2, 2004).
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<p>Public Comment</p>

<p>Docket Document ID: EPA-HQ-OW-2004-0003-0007</p>
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<p>Author Date: August 28, 2004</p>
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<p>Author: S.A. Kehinde</p>

Comment # F-1:

Dear Madam,

Further to our E-Mail of today, the following are the comments we want to pass to EPA:

Docket ID: OW-2004-0003

Docket Title: National Guidance. Best Management Practices For Preparing Vessels intended To Create Artificial Reefs.

Subject /Title: ARTIFICIAL REEFING ARE NOT NECESSARY.

COMMENTS: It is not necessary to apply artificial reefing in solving the problems caused by these *so* called obsolete vessels. We support Vessel donation/Conversion. Africans needs these vessels badly. If given to interested Africans, the beneficiaries (N0 Governmental entities must be allowed as they will politicize it and make it fail) can pay for cost of removing PCBS, Asbestos etcetra etcetra and also pay for conversion costs. The jobs will be done in the USA-more jobs for the Americans and a lot of savings for the US GOVERNMENT AND THE USA will be doing greater assistance to Africans.

Response to Comment # F-1:

Vessel conversion/donation/export to foreign countries is beyond the scope of the draft BMP guidance document. This document provides guidance on the preparation of obsolete

and decommissioned military and commercial vessels when employing the vessel management option of creating artificial reefs.

Comment # F-2:

Artificial reefing may turn USA waters to artificial junk yards. After stripping the vessels naked, it will be corroded and dissolved into the waters like the cornflakes in liquid milk. Another bigger problem will evolve. If the USA government will like to make the divers and the fish to be happy, it will be a good idea and very cheap to carry granites and other natural stones that will not cause pollution and sink them into the waters. GOD or Nature uses these stones and they are perfect for these purposes. Moreover, we think no prudent investors will like to go near this venture. It is not bankable nor advisable.

Response to Comment # F-2:

EPA does not intend to turn the waters of the U.S. into “artificial junk yards.” The best management practices guidance document identifies materials or categories of materials of concern that may be found aboard vessels and specifically identifies where they may be found. For each material or category of material, the guidance document provides a narrative clean-up performance goal, as well as information on methods for achieving those goals in preparation of the vessel prior to sinking. Materials of concern include, but are not limited to: oil and fuel, asbestos, polychlorinated biphenyls (PCBs), paint, and solids/debris/floatables.

The use of this guidance will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs. Best management practices are provided through clean-up performance goals that are directed at the level of cleaning and/or removing materials of concern aboard vessels. The preparation of vessels in this manner will help ensure that their use as artificial reefs is environmentally sound. The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The draft BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negative impacts on the environment with pollutants. The clean-up performance goals provided in this document, if implemented and accompanied by strategic site selection, will maximize the opportunity for a vessel to benefit the environment as an artificial reef.

The methods, approach, and level of effort for clean-up, as well as worker safety concerns, are directly dependent on the vessel’s condition and the amount of materials of environmental concern that are found aboard. Vessels where clean-up could pose potential worker safety risks or could incur high costs may not be good candidate vessels for reefing. Choosing a good candidate vessel to meet the goal of creating an artificial reef, complemented with the proper project planning, vessel preparation, and artificial reef siting, can lead to a successful project, which in turn can provide positive economic benefits for the respective coastal community and the project investors/sponsors.

It is beyond the scope of the BMP guidance document to explore materials unrelated to vessels or other structures for reefing.

Comment # F-3:

We strongly appeal to the USA Government to view these issues on humanitarian ground (Human beings) but not on animalitarian ground (Fish and sea animals). Even no divers will like Togo near murky waters. > These donations/Conversion are strictly for peaceful purposes. We in this part of the world (Africa) will greatly appreciate this assistance from the USA government.

Response to Comment # F-3:

Vessel conversion/donation/export to foreign countries is beyond the scope of the draft BMP guidance document. This document provides guidance on the preparation of obsolete and decommissioned military and commercial vessels when employing the vessel management option of creating artificial reefs.

These comments are from Messrs Kehinde Global Ventures Of BP7 Aneho,
Republic of Togo. West Africa.

E-Mail:alumoni@yahoo.fr

GOD BLESS THE GOVERNMENT AND THE PEOPLE OF THE UNITED STATES OF
AMERICA. (AMEN)

Thank you very much .
Best Regards
S.A. Kehinde

Docket ID: EPA-HQ-OW-2004-0003. <i>“Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.”</i> 69 Fed. Reg. 46141 (August 2, 2004).
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<p>Public Comment</p>

<p>Docket Document ID: EPA-HQ-OW-2004-0003-0008</p>
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<p>Author Date: September 24, 2004</p>

<p>Author: Barbara Nightingale Environmental Planner Planning Unit Aquatic Resources Division Washington State Department of Natural Resources</p>

Comment # G-I-1:

OW-Docket,

The attached file contains comments on the Docket ID No. OW 2004-0003 Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs from the Washington State Department of Natural Resources, Aquatics Division.

Thank you for the opportunity to comment.

Barbara Nightingale
Environmental Planner
Planning Unit
Aquatic Resources Division
Washington State Dept. of Natural Resources

Response to Comment # G-I-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0008 (Comment # G-I-1), was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0009 for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0009

Author Date: September 24, 2004

Author: Loren J. Stern, Manager
Aquatic Resources Division
The Washington Department of Natural Resources (WDNR)



WASHINGTON STATE DEPARTMENT OF
Natural Resources

DOUG SUTHERLAND
Commissioner of Public Lands

September 24, 2004

Water Docket
Environmental Protection Agency
Mail Code 4101T
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Attention: Docket ID No. OW-2004-0003

Subject: Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs

To whom it may concern:

Thank you for the opportunity to provide comments on the draft Federal Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.

The Washington Department of Natural Resources (WDNR) manages over 2.4 million acres of state-owned aquatic lands. These lands include shorelands, tidelands, and bedlands in Puget Sound, along the Pacific Coast, and in navigable rivers and lakes throughout Washington State. WDNR's management authority derives from the State Constitution. As proprietary manager of state-owned aquatic lands, WDNR has been directed to manage the lands for the benefit of the public in a manner that provides a balance of public benefits for all citizens of the state. These public benefits include encouraging direct public use and access, fostering water-dependant uses, ensuring environmental protection, and utilizing renewable resources.

As stewards and managers of state-owned aquatic lands, WDNR has the authority to determine or prohibit the placement of sunken vessels on state-owned aquatic lands. To allow such placement, WDNR would set stringent criteria and require an impact assessment for any proposal to use sunken vessels as artificial reefs. The widespread use of sunken vessels as artificial reefs in Washington State is largely precluded by Washington's extensive area of inland waterways, the nature of the aquatic habitats and animals that have evolved to use these waterways, the extent of human uses, and the exposed high-energy nature of the state's outer coast. In Washington, natural aquatic habitats include protected sand and mud flats, eelgrass and kelp beds, and rocky reefs. Native animals have evolved in response to these natural habitats. By adding artificial reefs, we are altering nature's balance in these aquatic ecosystems.

AQUATIC RESOURCES DIVISION 1111 WASHINGTON ST SE PO BOX 47027 OLYMPIA, WA 98504-7027

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Docket ID No. OW-2004-0003

September 24, 2004

Page 2 of 3

Comment # G-II-1:

The draft provides needed guidance for vessel cleanup to protect against potential human and environmental contamination risks. However, based upon our previous experiences with sunken vessels and the placement of artificial reefs in Washington waterways, we've found that such reefs and sunken vessels alter the physical and biological nature of aquatic habitats important to species listed under the Endangered Species Act (ESA) and other species of concern.

Response to Comment # G-II-1:

The draft BMP guidance document refers to the purpose of creating an artificial reef to be to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. Impacts of vessel-to-reef projects to species listed under the Endangered Species Act and other species of concern, and the potential of altering nature's balance in the aquatic ecosystems in which these vessels are to be placed, should be considered in the initial phases of the project planning and feasibility. The BMP guidance does stress that planning (including site selection), long-term monitoring, and evaluation are necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained.

Further, the draft BMP guidance document's brief discussion of artificial reef site selection states that "because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats." The draft BMP guidance document also states that applicants should consult with the appropriate federal and State agencies to ensure that vessel placement would not adversely affect endangered species or habitat areas of particular concern or considered to be special aquatic sites. Selection of an appropriate artificial reef site is a critical element for any successful vessel-to-reef project.

Comment # G-II-2:

Species associated with artificial reefs, such as rockfish, are species that do not stray far from their adult habitat and therefore become easy prey for fishermen. In Washington, these species are currently declining and have been proposed for listing under the ESA. The cause for their decline is largely overfishing. Using sunken vessels for artificial reefs to facilitate access and use by fishermen would further contribute to their decline. Sunken vessels are known to harbor predators of ESA listed species, such as chinook and chum salmon. Salmon outrungrate at a small size from their natal streams to Washington estuaries and are known to use nearshore habitats as protected migratory corridors during a most vulnerable life-history stage. Without the presence of the sunken vessels, these predators would not ordinarily be present in the juvenile salmon migratory corridor.

The presence of sunken vessels and the havens such structures provide for large predators could significantly increase the mortalities of these ESA listed species.

Response to Comment # G-II-2:

The general concerns regarding purpose/intent of reef creation, reef siting, and potential conflict among competing user groups of the reef site raised in the comment letter are addressed in the draft version of the BMP guidance document. More specifically, the draft guidance states that the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources.

Impacts of vessel-to-reef projects to species listed under the Endangered Species Act and other species of concern and the potential of altering nature's balance in the aquatic ecosystems in which these vessels are placed should be considered prior to creating an artificial reef. The BMP guidance stresses that planning (including siting), long-term monitoring, and evaluation are necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. Improperly planned, constructed, or managed reefs may be ineffective, may cause conflict among competing user groups of the reef site, may increase the potential to over harvest targeted species, or may damage natural habitats. In such cases, the anticipated benefits of an artificial reef project may be negated. Artificial reefs should not be sited in locations that cause harm to existing living marine resources and habitats.

Vessel placement/site selection, while not the primary focus of the draft BMP guidance document, is an integral part of any vessel-to-reef project. The draft BMP guidance document's cursory description of artificial reef site selection recommendations states that "because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats." The BMP guidance document also states that applicants should consult with the appropriate federal and State agencies to ensure that vessel placement would not adversely affect endangered species or habitat areas of Endangered Species Act listed species and species of State and local concern or areas considered to be special aquatic sites. Further, the BMPs state that vessel placement for reefing should conform to any federal, State, or local requirements or policies for artificial reefs.

Comment # G-II-3:

Another significant risk in Washington State is the known tendency for such vessels to snare derelict fishing nets and to continue the catch of animals in perpetuity or until the gear is discovered and removed.

Response to Comment # G-II-3:

The BMP guidance document stresses that beyond the project planning that takes place prior to reefing, long-term monitoring and evaluation once the vessel is settled at the reef site are necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. Such monitoring and evaluation of a given reef would provide opportunities to assess the integrity of the reef, as well as the anticipated benefits of an artificial reef project, which is not to cause harm to existing living marine resources and habitats as stated in Comment # G-II-3.

Comment # G-II-4:

Upon review of the draft guidance, and in consideration of the above public benefits, and an ongoing dilemma WDNR now faces with the growing number of derelict vessels found in our state's inland waterways, we raise the following list of concerns and comments:

- **Page 5, Executive Summary, paragraph 2, sentence 3.** This paragraph makes the general statement that "artificial reefs should be developed such that they enhance marine resources and benefit the marine environment." For a stronger and clearer statement, the wording should be changed to: "Artificial reefs should only be developed where such reefs are known to enhance native marine resources and benefit the natural marine environment."

Response to Comment # G-II-4:

EPA accepts this comment and the suggested change has been incorporated in the final guidance document. The comment will be addressed as follows:

“Artificial reefs should only be developed where such reefs will enhance native marine resources and benefit the natural marine environment.”

Comment # G-II-5:

- **Page 5, Executive Summary, paragraph 5, sentence 2.** This sentence states that this guidance neither imposes legally binding requirements nor substitutes for other regulatory authorities. As state interests include not only regulatory but proprietary management authority, the wording should be changed to: "It does not impose legally binding requirements on any federal agency, States, other regulatory, proprietary management authorities, or the regulated community, and may not apply to a particular situation based upon the circumstances. Proprietary interests include the ability of the landowner, including state governments, to authorize or prohibit such uses and to charge fees."

Response to Comment # G-II-5:

EPA accepts this comment in part and has revised the disclaimer to refer to proprietary management authorities as “resource management authorities” so as to read as follows:

“This guidance does not substitute for any statute or regulation, nor is it a regulation itself. The document recommends environmental best management practices for use in the preparation of vessels for use as artificial reefs. Associated with the recommended environmental best management practices are narrative environmental clean-up performance goals, as well as recommendations and suggestions in furtherance of those goals. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity.”

Comment # G-II-6:

- **Page 11, third paragraph, bulleted list.** This paragraph provides a bulleted list of the objectives for using sunken vessels as artificial reefs. One of these objectives is to facilitate access and use by recreational and/or commercial fishermen. In Washington, as species known to be associated with artificial reefs, such as rockfish, are currently in decline to the point of being proposed for listing under the ESA due to overfishing, we request the

Docket ID No. OW-2004-0003

September 24, 2004

Page 3 of 3

removal of the second bullet "facilitate access and use by recreational and/or commercial fishermen."

Response to Comment # G-II-6:

Properly prepared and strategically sited artificial reefs can enhance fish habitat, provide more access to quality fishing grounds, and provide managers with another option for conserving, managing, and/or developing fishery resources, any of which is dependent upon the anticipated benefits of the artificial reef project. Because a specific goal for a given artificial reef project could be to enhance a target species or to provide access to quality fishing grounds, EPA addresses the concern over text in the second bullet by stating that:

"Additional considerations that may be relevant to the placement of a vessel for the creation of an artificial reef include facilitating access and use by recreational and/or commercial fisherman."

Additionally, EPA notes in the guidance that:

"Improperly sited reefs might enhance a recreational fish resource at the expense of other species or habitat; it may also alter the ecological balance of the area."

Comment # G-II-7:

- **Page 12, second paragraph, bulleted list.** Add "migratory corridors and rearing habitats of ESA listed species and species of state and local concern" as a sixth bullet to the first list of excluded areas.

Response to Comment # G-II-7:

EPA accepts this comment in part for the reasons described in the narrative introduction of the comment. EPA has more broadly addressed this concern by adding a bullet in the final guidance document as follows:

“Artificial reefs should not be constructed such that they are placed on or threaten the integrity of mature habitats such as habitats of Endangered Species Act listed species and species of State and local concern.”

Comment # G-II-8:

- **Page 29, paragraphs 2 and 3.** These paragraphs refer to those instances when the bottom coating application date is unknown. As a precautionary approach to protect against the potential harmful effects of a known biocide, this paragraph should require bottom paint removal, rather than further evaluation whenever the length of time since the last biocide application is unknown.

Response to Comment # G-II-8:

Even though the last biocide application date may be unknown, removal of bottom paint may not be necessary. If a vessel has been inactive for at least 12 years, during which time no new anti-fouling system has been applied, and essentially all the underwater hull area is covered with marine growth, the anti-fouling coatings can be left in place without further evaluation, as they are no longer likely to present risks of harm. If satisfactory evidence relating to underwater hull coating types and coating application dates is not available, and if the anti-fouling coating seems to be inhibiting fouling growth according to established anti-fouling paint efficacy, further evaluations should be carried out to ascertain the current anti-fouling properties of the coating. This further evaluation would help determine if the anti-fouling paint is inhibiting growth, or if other factors may be having an influence. Though EPA agrees with the comment, no text modifications appear to be necessary.

Comment # G-II-9:

- **Page 31, paragraph 1.** The description of vessel debris to be removed prior to sinking should include "all netting material."

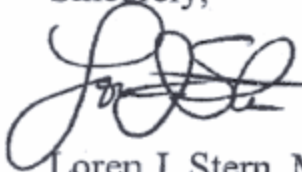
Response to Comment # G-II-9:

Although “netting material” could be considered “foreign matter” (per the draft guidance), EPA incorporated the suggested change in the final guidance document under the Solids/Debris/Floatables discussion of Vessel Preparation. EPA addressed the comment as follows:

“Ship’s surfaces (e.g., decks, bulkheads, overheads, and surfaces of appurtenances) should be thoroughly cleaned to remove all dirt, loose scale, trash, exfoliating paint, paint chips, hazardous materials, and other foreign matter (including netting material).”

Thank you for the opportunity to comment on this draft guidance. If you have any questions or need further information, please do not hesitate to contact Barbara Nightingale, Environmental Planner, at (360) 902-1068 or via e-mail at Barbara.nightingale@wadnr.gov.

Sincerely,



Loren J. Stern, Manager
Aquatic Resources Division

c : Barbara Nightingale, WDNR

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Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0010

Author Date: September 29, 2004

Author: Peggy Bowen
NJ Council of Diving Clubs

Comment # H-1:

As a New Jersey Diver, I believe your limit of PCB's is way to high. It shouldn't be higher than that allowed in other parts of our New Jersey ocean waters. I would comment further but I just found out about this document today (9/29/04)

Response to Comment # H-1:

EPA does not believe that this level is too high. The Agency believes that given that the PCBs in PCB bulk product waste are tightly bound within the product matrix, 50 ppm is an appropriate lower limit for PCB bulk product waste (see 63 FR 35411). The PCBs are expected to leach out of the matrix more slowly than PCBs from other materials. The relative leachability should hold in an aqueous environment as well as a terrestrial environment.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0011

Author Date: September 24, 2004

Author: Washington Department of Natural Resources (WDNR)

Comment # G-III-1:

Duplicate comment. Please see EPA-HQ-OW-2004-0003-0009.

Response to Comment # G-III-1:

Please refer to the response provided for EPA-HQ-OW-2004-0003-0009 (Commenter Identification "G-II").

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0012

Author Date: September 30, 2004

Author: Anne Newsom
The Commonwealth of Virginia
Department of Environmental Quality

Comment # I-1:

09/30/2004 03:16 PM

To: Group Ow-Docket@EPA

cc:

Subject: Attention: Docket ID No.

OW-2004-0003

Dear Sir/Madam,

Due to an error in our original comments mailed by our office on September 28, 2004, please accept this corrected version of our comments. A signed copy of the corrected version will be mailed to you shortly. If you have any questions, please contact me at the address/phone number below.

Anne Newsom

*VDEQ-OW-2004-0003-correctedorignial.doc

*VDEQ-OW-2004-0003-letterofcorrection.doc

Anne Newsom

Department of Environmental Quality

Office of Environmental Impact Review

629 East Main Street

Richmond, Virginia 23219
(804) 698-4135
(804) 698-4319 (fax)
email: abnewsom@deq.virginia.gov

Response to Comment # I-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-00012, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-00013 (Commenter Identification "I-I") for the comment letter submitted.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0013
Author Date: September 28, 2004
Author: Ellie Irons
Program Manager
Office of Environmental Impact Review
The Commonwealth of Virginia

Comment # I-I:



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Director

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September 28, 2004

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003

RE: Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs (DEQ # 04-164F).

Dear Sir/Madam:

The Commonwealth of Virginia has completed its review of the above-referenced guidance. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. The following agencies and planning district commission participated in this review:

Department of Environmental Quality
Department of Game and Inland Fisheries
Department of Conservation and Recreation
Virginia Port Authority
Virginia Institute of Marine Science
Hampton Roads Planning District Commission

The Department of Health and the Marine Resources Commission were also invited to comment.

Project Description and Purpose

The Environmental Protection Agency (EPA), with support from the Department of Transportation's Maritime Administration (MARAD), intends to provide a national, environmentally-based best management practices guidance for the preparation of vessels

Draft National Guidance
Docket ID No. OW-2004-0003
Page 2

to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. Artificial reefs should be developed in a manner that enhances marine resources and benefits the marine environment. Strategically sited artificial reefs not only enhance aquatic habitat, but also provide an additional option for conserving, managing and/or developing fishery resources.

Although the best management practices presented in the Draft Guidance document are intended for use when preparing vessels to serve as artificial reef habitat, the best management practices

may have applicability to other in-water uses of vessels, such as the creation of recreational diving opportunities, and placement of breakwaters or other types of barriers. When preparing a vessel for other permitted in-water uses, consideration should be given to vessel stability and integrity prior to and after final placement.

Comments

In general, the Commonwealth supports the EPA in providing national, environmentally-based best management practices as set forth in the guidance document. Please note, however, the guidance document does not preclude the Commonwealth from commenting on future sitespecific projects. Any proposed projects located in Virginia's coastal zone would be subject to review under the Virginia Coastal Resources Management Program (VCP) and would require the project proponent to submit a consistency determination to this office for review.

Comments submitted by reviewers during the Commonwealth's review of the draft guidance document are attached for your review. A summary of these comments follows.

The Department of Game and Inland Fisheries supports the siting guidance that stipulates that while artificial reefs can improve local fishery resources, care must be taken to avoid locating a reef where it may adversely impact wildlife resources (Draft Guidance Document, pages 11-12).

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

The Department of Environmental Quality's Northern Regional Office (NRO) states that the guidance outlined in the document on the removal of toxic and/or hazardous substances should

Draft National Guidance
Docket ID No. OW-2004-0003
Page 3

minimize impacts to water quality. However, both the DEQ-NRO and the DEQ-Tidewater Regional Office state that the document does not address the handling and disposal of wastes generated during vessel preparation. The DEQ-NRO suggests that information should be added to the Executive Summary and each section of the document stating that all waste generated during the preparation of the vessels must be stored and disposed of according to 40 CFR 260 through 265 and all applicable state regulations. Also, discussion should be added to Appendix B citing the hazardous waste regulations under 40 CFR 261 through 265. In addition, the guidance document should address the use of appropriate spill containment during the sinking of the vessels to capture any oil or fuel that appears on the surface and that the party responsible for sinking the vessel should be prepared to capture and clean up any residual material.

General Information

The Draft Guidance document (page 6) states that the document does not cover the specific statutory requirements and associated regulations as well as permit processes applicable to the process of preparing a vessel for reefing. However, the DEQ-Waste Division would like to provide some general information that would be relevant to any proposal for preparation of and the sinking of a vessel in waters of the Commonwealth of Virginia.

The DEQ-Waste Division states that for any ship disposal/Artificial Reef project, soil or ship-related material that is suspected of contamination, or wastes that are generated in or prior to the disposal process, must be tested and disposed of in accordance with applicable federal, State and local laws and regulations. Some of the applicable state laws and regulations in Virginia are the Virginia Waste Management Act, Code of Virginia Sections 10.1-1400 *et seq.*, the Virginia Hazardous Waste Management Regulations (9VAC 2-60) and the Virginia Solid Waste Management Regulations (9VAC 20-110). Some of the applicable Federal laws and regulations include the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.* and the applicable regulations contained in Title 40 of the Code of Federal Regulations, and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials, 49 CFR Parts 107.

In addition, ship-related structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition or disposal. If ACM or LBP are found, in addition to the federal waste-related regulations, State regulations 9VAC20-80-640 for ACM and 9VAC20-60-261 for LBP must be followed. DEQ also encourages all projects and facilities to implement pollution prevention principles, including the reduction, reuse and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

Draft National Guidance
Docket ID No. OW-2004-0003
Page 4

Thank you for the opportunity to review the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs. Copies of future NEPA or Coastal Zone Management Act documents prepared for sites located in Virginia should be sent to DEQ's Office of Environmental Review for review. For further information, please contact me at (804) 698-4325 or Anne Newsom at (804) 698-4135.

Sincerely,

Ellie Irons
Program Manager
Office of Environmental Impact Review

Enclosures

cc: Michelle Henicheck, DEQ-OWWP&C
John Bowden, DEQ-NRO
Harold Winer, DEQ-TRO
Allen Brockman, DEQ-Waste
Andrew Zadnik, DGIF

Response to Comment # I-I:

Per comment letter EPA-HQ-OW-2004-0003-0014, the comment letter EPA-HQ-OW-2004-0003-0013 was amended. The amended letter was submitted and received (see comment letter EPA-HQ-OW-2004-0003-0028). For this reason, the response for the EPA-HQ-OW-2004-0003-0013 comment letter is provided in the response given for the EPA-HQ-OW-2004-0003-0028 (Commenter Identification "I-III").

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0014
Author Date: September 28, 2004
Author: The Commonwealth of Virginia
Department of Environmental Quality

Comment # I-II:



COMMONWEALTH of VIRGINIA

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September 30, 2004

Water Docket
Environmental Protection Agency
Mailcode: 4101T

1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003

RE: Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs (DEQ # 04-164F).

Dear Sir/Madam:

This letter is provided to clarify the Department of Environmental Quality's September 28, 2004 comments on the above-referenced project. Page 2, paragraph 4 in the "Comments" section of our letter to your office. Our initial correspondence indicated that the Draft National Guidance document addressed the topic of waste from a toxic and hazardous waste perspective. This is incorrect since the document does not specifically address hazardous or solid wastes, but instead, the Draft National Guidance document only addresses some toxic and hazardous substances.

The new Page 2, paragraph 4, "Comments" section should read as follows:

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

We are sending this letter and a corrected version of our September 28, 2004 letter by email in order to reach your office by the October 1, 2004 deadline. We will follow up this email with a signed copy and 3 originals of both letters in the mail. We regret any inconvenience that may have resulted from this error. Thank you for the opportunity to comment on this matter.

Sincerely,

Ellie Irons, Program Manager
Office of Environmental Impact Review

Cc: Allen Brockman, DEQ-Waste

Response to Comment # I-II: As mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0014, letter EPA-HQ-OW-2004-0003-0013 was amended. The amended letter was submitted and received (see comment letter EPA-HQ-OW-2004-0003-0028). For this reason, the response for the EPA-HQ-OW-2004-0003-0013 and EPA-HQ-OW-2004-0003-0014 comment letter is provided in the response given for EPA-HQ-OW-2004-0003-0028 (Commenter Identification "I-III").

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0015

Author Date: September 30, 2004

Author: Jon Dodrill
Florida Fish and Wildlife Conservation Commission

Comment # J-1:

09/30/2004 06:09 PM

To: Group Ow-Docket@EPA

cc: Laura-S Johnson/DC/USEPA/US@EPA, "Robson, Mark" <mark.robson@MyFWC.com>, "Williams, Roy" <roy.williams@MyFWC.com>, "Horn, Bill" <bill.horn@MyFWC.com>, "Mille, Keith" keith.mille@MyFWC.com

Subject: Individual comments on Best Management Practices for Ship Cleaning

**Dodrill Comment on Artificial Reef BMPs 093004.doc

The attached comments represent my personal individual comments/suggestions specific to the EPA-MARAD draft BMPs where comments are due to EPA by tomorrow. Earlier FWC as an agency made some more general comments on the BMPS in the context of a federal consistency review that were forwarded to the Florida State Clearing House located within the Florida Department of Environmental Protection.

Jon Dodrill

Response to Comment # J-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0015, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0016 (Commenter Identification "J-I") for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0016

Author Date: September 30, 2004

Author: Jon Dodrill*
Florida Fish and Wildlife Conservation Commission
* These comments do not represent an agency wide response but are an individual submittal based upon my personal review of the BMPs.

Comment # J-I-1:

September 30, 2004

Individual Comments on EPA-MARAD Draft Document: ***Draft National Guidance: Best Management Practices for preparing Vessels Intended to Create Artificial Reefs.***

Reference: Public Announcement in Federal Register, Vol. 69, No. 147, Monday August 2, 2004.
Docket ID No.OW-2004-0003.

General Comments

Based upon my 11 years of personal involvement with the State of Florida's Artificial Reef Program, I strongly support the concept of uniform national standards for preparation of vessels to be utilized as artificial reefs for purposes of habitat enhancement, as potential fisheries/resource management tools, for recreational and commercial fishing, and for sport diving activities.

Response to Comment # J-I-1:

The best management practices described in the BMP guidance document will serve as national guidance for the preparation of obsolete and decommissioned military and commercial vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for obsolete MARAD and Navy vessels, the development of this guidance is timely. Prior to this BMP guidance, no guidance of this kind had been available.

Comment # J-I-2:

A formal request to develop such guidelines was made over 12 years ago by the State of Virginia's artificial reef coordinator. Development of consistent national vessel cleaning standards for artificial reefing has been subsequently supported by other coastal states' marine fisheries management agencies who are members of either the Gulf or Atlantic States Marine Fisheries Commissions.

Naval and U.S. Maritime Administration (MARAD) obsolete vessels should not be held to higher cleaning standards than the range of civilian vessels currently sunk by Coastal Gulf and U.S. States as artificial reefs. Civilian vessels have the same potential pollutant issues as military vessels. All vessels regardless of their origin should be cleaned to the same standards as set forth in the BMPs unless site-specific circumstances demand even stricter cleaning standards. This should be very clearly stated in the BMPs. Some individuals have the impression that these are standards/guidelines applicable only to military ships and have no bearing on civilian vessels.

Response to Comment # J-I-2:

Per the draft BMP guidance document, the second paragraph of the Executive Summary states the document's applicability as follows: "Options for managing obsolete and

decommissioned military and commercial vessels include reuse of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea.” To address the above comment, EPA incorporated further clarification as to the applicability of the guidance into the final guidance as follows:

“This document discusses the preparation of obsolete and decommissioned military and commercial vessels when employing the vessel management option of artificial reefing.”

The first paragraph of the Introduction also refers to the applicability of the document as follows: “Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. This document discusses the vessel management option of artificial reefing.” Further clarification of the guidance’s applicability to both military and civilian vessels is not necessary and beyond the scope of Congress’ direction to EPA (and MARAD).

Comment # J-I-3:

There should be discussed in the BMPs a means for regulatory agencies to verify through a documentation process that the vessels cleaned for reefing have in fact been cleaned in accordance with the BMPs. In the case of a federal entity such as the Navy or MARAD overseeing vessel cleaning, or a state agency itself, the EPA regional office in the region where the vessel is to be sunk should be able to review a completion report describing exactly what was done to the vessel. A signed certification of completion of cleaning to BMP standards and compliance with state or federal laws should be submitted to the appropriate EPA regional office by the entity responsible for the cleaning. In the case of a local coastal government or local private sponsor overseeing vessel cleanup, a similar completion report should be submitted to the state environmental regulatory agency and/or the fisheries management agency housing the state’s artificial reef program.

Response to Comment # J-I-3:

In keeping with Section 3516 of the National Defense Authorization Act for Fiscal Year 2004, this guidance document addresses only recommended clean-up practices for vessels that are intended to be placed as artificial reefs. It neither endorses such placement nor does it address the potential availability or environmental effects associated with alternatives to placement of vessels as artificial reefs. This guidance does not substitute for any statute or regulation, nor is it a regulation itself. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity.

Among other things, the document includes mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels. It should be noted, however, that under 10 U.S.C. 7306b(c), the Secretary of the Navy must ensure that the preparation of a vessel (that is stricken from the Naval

Vessel Register) for use as an artificial reef is conducted in accordance with the environmental best management practices in this guidance. This latter statutory requirement, not today's guidance document itself, governs the Navy's application and use of this document.

The complete text of the National Defense Authorization Act for Fiscal Year 2004 is provided in Appendix A "*Federal Statutes Related to the Transfer of Obsolete MARAD and Navy Vessels for Use as Artificial Reefs*" of the BMP guidance document.

When preparing a vessel that is intended to serve as an artificial reef, documenting the clean-up procedures used and the contaminants that will remain onboard the vessel is a key element of the BMP guidance document. More specifically, describing how the BMP narrative clean-up goals were met and conducting a visual inspection are needed to determine whether and how the vessel has been cleaned to the level recommended in this guidance document so the vessel can be managed appropriately. A recommended checklist for documenting vessel clean-up using the BMP guidance document has been incorporated in the final guidance document as an appendix (Appendix F "Recommended Checklist for Documenting Vessel Clean-up Using this Guidance"). Because the checklist is recommended, rather than required, EPA did not incorporate the Comment that documentation be signed and/or certified, only that the name and position title of the person who prepared the recommended document be identified, along with contact information. To the extent the documentation would be relied on for compliance with other applicable state and federal laws, those other laws may require signature and/or certification.

A vessel inspection by qualified personnel should be conducted to confirm satisfactory clean-up/preparation. It also should be noted that applicable regulatory regimes may require such an inspection. For example, achieving and verifying satisfaction of the BMP clean-up goals could help support permit applications under the Clean Water Act Section 404 or the Rivers and Harbors Act Section 10, if a permit application is submitted to the United States Army Corps of Engineers. Further, robust BMP documentation might prove useful for demonstrating consistency with Coastal Zone Management Act programs, as well as for any other State or local certifications necessary to carry out a vessel-to-reef project. Also, EPA officials may find BMP documentation useful as part of their review under EPA certification authority per the Liberty Ship Act. (Note: this Act only applies to DOT/MARAD-owned obsolete vessels intended for use as an artificial reef for the conservation of marine life.)

In the process of preparing a vessel for reefing, there are requirements and regulations, including permit processes, appropriate disposal of waste generated during vessel clean-up preparation, and vessel inspections by appropriate authorities to consider and that are not highlighted in this document.

Comment # J-I-4:

As a final general comment, worker safety issues were intentionally not addressed in the BMPs.

Worker safety is a key component of vessel preparation and one that has been ignored to some degree either intentionally or out of ignorance when civilian vessels have been prepped by volunteers, etc. Since these BMPS are also supposed to cover civilian vessels, it would be helpful to have an additional appendix that could provide in bullet form key safety issues and concerns to be particularly aware of. You could still have a qualifier that this is not an OSHA safety manual but these are some basic safety thoughts to be aware of: (a. clothing appropriate for the job-hard hats, steel toes shoes, eye protection etc), identification of obvious hazards (holes cut through deck, etc), use of cutting torches in enclosed environments, tracking personnel on worksite, etc. The SUPSHIP BATH onsite supervisors who deal with scrapping, or reefing issues could easily put together a couple pages of “heads up” safety items based on their years of first hand experience.

Response to Comment # J-I-4:

Worker safety issues are a significant component of any vessel-to-reef project. However, the BMP guidance does not address worker safety issues because the statutory direction for development of the BMP guidance document is to provide national, environmentally-based best management practices (for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas). Although EPA recognizes the importance of worker health and safety issues, the Agency’s expertise lies in environmental matters, and not necessarily worker health and safety. Those with an interest in worker safety issues and concerns should consult other relevant documents, such as those prepared by OSHA, State or local safety agencies, and other relevant EPA documents. For example, EPA’s *A Guide for Ship Scrappers – Tips for Regulatory Compliance* presents important information related to environmental and worker safety and health issues for ship scrapping/ship breaking operations when handling specific hazardous materials. This document can be accessed via the World Wide Web at <http://www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf>.

Specific Comments

Comment # J-I-5:

1. Breakwaters/Barriers (p. 36) I don’t support the use of vessels as proposed in the Best Management Practices (BMPS) as breakwater/shore protection structures. In nonmilitary applications, vessels should not be utilized to replace materials more specifically engineered to meet a site-specific breakwater objective. Use of military vessels in shallow water littoral environments as wave attenuation barriers to protect beaches, anchorage sites or manmade coastal structures would have only short-term value. Review the fate of the post D-Day 1944 breakwaters off the Normandy Beaches that were composed of sunken vessels. Although initially achieving their military objective of protecting the offloading of men and materials onto the beaches, subsequent storm events compromised intermediate to long-term effectiveness of the sunken vessels as a breakwater.

Response to Comment # J-I-5:

EPA accepts the comment and the suggested change has been incorporated in the final document; text referring to the placement of vessels to serve as breakwaters or other types of barriers has been deleted from the guidance.

Comment # J-I-6:

Debris fields generated in a high-energy surf environment could migrate under storm conditions onto adjacent beaches. Past hurricanes in the western Florida Panhandle have cast up on the beach former reef materials such as metal aircraft parts, car body frames, and most recently, during Hurricane Ivan (September 2004) over 1,500 automobile tires on Okaloosa County Beaches (NW Florida). These tires were deployed off an adjacent County miles offshore over twenty-five years ago. The Breakwater/Barrier section of the BMPs cites a number of reasons that it is **not** a good idea to use vessels as breakwaters (stability issues, premature structural failure, etc). What entity is promoting their use for such purposes?

Response to Comment # J-I-6:

Initially, the concept of using vessels for other in-water uses such as breakwaters or other types of barriers was suggested by MARAD. Upon further consideration of this in-water use of obsolete vessels, both MARAD and EPA decided to strike from the final BMP guidance document all discussions that pertain to using vessels as breakwaters or other types of barriers. The final BMP guidance document does not present the placement of vessels as breakwaters or other types of barriers as a management option for obsolete vessels.

Comment # J-I-7:

Recommendation: Eliminate the section discussing use of vessels as breakwaters/barriers altogether. As an alternative if appropriate, replace with “Military Applications of Sunken Vessels” or “Other In-Water Uses”. The Navy’s Reef-ex vessel sinking operations for training, and cleaning standards for vessels sunk during such training were never mentioned in the BMPs. Navy Reef-ex sinking vessel cleaning preparations should be mentioned and it should be stated that either the Navy will or will not conform to the same BMP standards as vessels used for shallow water artificial reefing. If there are in fact additional intended wartime military applications that may be pursued elsewhere in the world as has historically occurred (i.e. creating disruptions to navigation by using sunken vessels to block harbor entrances and narrow shipping corridors, creating vessel breakwaters to facilitate amphibious landings, etc.) then possibly this should be discussed in a military applications section or “other in-water uses” section along with the Navy’s Reef-ex program.

Response to Comment # J-I-7:

Although the draft BMP guidance document mentions various options for managing obsolete and decommissioned military and commercial vessels (e.g., reuse of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or

at sea), the purpose of the guidance document is to present information on the preparation of vessels when employing the vessel management option of artificial reefing. For this reason, there will not be a discussion pertaining to Navy's vessel sinking exercises for training (i.e., SINKEX). SINKEX (short for SINKing EXercise) involves the use of obsolete military vessels for target practice by the U.S. Navy, with the consequent sinking of the vessel. The SINKEX program is regulated under an EPA Ocean Dumping Act general permit issued by EPA in 1977 (40 CFR 229.2) and a 1999 interpretation of that permit regarding PCB-related requirements. Under this permit, Navy is required to remove to the maximum extent practicable all materials which may degrade the marine environment. The clean-up requirements for a SINKEX vessel are already established under the Ocean Dumping Act general permit; therefore, the BMP guidance document would not be applicable.

The final BMP guidance document does not highlight the placement of vessels as breakwaters or other types of barriers as a management option for obsolete vessels. Upon further consideration of this in-water use of obsolete vessels, MARAD and EPA removed all related discussions from the guidance document.

Comment # J-I-8:

2. Statutory Requirements. (Executive Summary), also p.6. The BMPs state: "There are statutory requirements and associated regulations as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document." The working group who developed these BMPS was well represented by members from at least seven different federal agencies. State agency representation was notable by its absence. **Recommendation:** Since representatives from a number of different federal agencies provide the full input to create this document, a more complete list of the pertinent federal statutes, regulations, and other legal instruments of these agencies as relates to the preparation and reefing of vessels, as artificial reefs *should be included in this document*. A good starter list has already been provided in Appendix B (pp. 40-42). That list merely needs to be augmented.

Response to Comment # J-I-8:

In the process of preparing a vessel for reefing, there are requirements and regulations, including permit processes, appropriate disposal of waste generated during vessel clean-up/preparation, and vessel inspections by appropriate authorities to consider that are not discussed in great detail in this document, with the exception of TSCA requirements applicable to PCBs. However, in response to this comment and others of a similar nature, EPA revised significantly Appendix B to provide an overview of principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef. Further, other than siting considerations that would affect how a vessel is prepared for use as an artificial reef, this document does not detail the legal requirements applicable to transfer, siting, or sinking of vessels as artificial reefs in vessel-to-reef projects, except for the overview offered in Appendix B.

The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. On a case-by-case basis, additional federal statutes also may apply, though the federal statutes identified in Appendix B would be most relevant for the preparation of a vessel for use as an artificial reef. The final preparation plan for any particular artificial reef project will necessarily be vessel-specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations. State and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate State and local authorities to identify such further requirements.

This Appendix identifies selected federal statutes relevant for consideration in preparation of a vessel for use as an artificial reef. For these statutes, the Appendix explains their potential relevance and briefly summarizes the relevant provisions. The first set of statutes briefly summarized are principal environmental laws which may be relevant to the removal of material from vessels or the disposal of such removed material. In addition, although this BMP guidance focuses on environmental best management practices for vessel preparation, for the reader's convenience the Appendix also briefly summarizes federal statutes establishing permit requirements for the actual placement of the vessel as an artificial reef. Finally, the Appendix briefly describes a number of other significant federal environmental statutes that may affect issuance of such permits or the actual conduct of placement activities. Readers also should be aware that in 2000, EPA published tips for regulatory compliance for ship scrapping, and that document contains additional guidance that may be useful in preparation of a vessel for use as an artificial reef. See www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf.

Comment # J-I-9:

For example there are no US Coast Guard regulation mentioned. Part of preparing a ship for reefing is knowing in advance where the vessel is going to be placed. Coast Guard regulations regarding navigational clearance issues and associated aid to navigation marking requirements and regulations authorizing Coast Guard to inspect vessels prior to sinking should be included. Additionally US Army Corps has specific CFRs related to artificial reefs that could be cited.

Response to Comment # J-I-9:

Under 10 U.S.C. 7306b(c), preparation of a vessel for use as an artificial reef needs to be conducted in accordance with “any applicable federal laws.” The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. EPA did not intend that Appendix B of the BMP guidance document would provide an exhaustive list of every conceivably relevant statute to vessel-to-reef projects, nor do the brief summaries in this

list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized.

With regard to the comment, Appendix B includes some relevant regulations that fall under the U.S. Army Corps of Engineers -- the Clean Water Act Section 404 and the Rivers and Harbors Act Section 10. As for the suggestion to include Coast Guard regulations regarding navigational clearance issues and associated aid to navigation, neither the guidance document nor Appendix B details the legal requirements applicable to navigational clearance issues or associated aid to navigation marking requirements.

As for the commenter's request to include "regulations authorizing Coast Guard to inspect vessels prior to sinking," there are no U.S. Coast Guard (USCG) regulations applicable to vessel reefing, other than those that apply generally to any "obstructions to navigation" in waters subject to USCG jurisdiction. It is USCG's understanding that the location of any intended reefing project will not, by definition, negatively impact navigation safety. Therefore, USCG inspection of the vessel prior to reefing is not legally required. However, USCG advises that it is studying the issue, and further advises that it may consider any particular vessel reefing request for inspection, under appropriate policies, yet to be developed and if resources permit. If USCG chooses to assist EPA by offering to inspect a vessel (either using its own personnel or the personnel of another organization), USCG may use the clean-up provisions of the vessel ocean dumping permit (40 CFR 229.3(a)(3)) as a guide for advising EPA on the USCG assessments regarding whether reefing the vessel will unacceptably degrade the marine environment. In this instance, the standards developed under the Marine Protection, Research, and Sanctuaries Act (MPRSA) would be used only from the perspective of vessel inspection prior to reefing, even though reefing a vessel is not considered ocean dumping under MPRSA.

Comment # J-I-10:

The executive summary statement could be modified to say: "Federal statutory requirements, laws, executive orders federal permit processes and other legal authorities as may apply to the reefing of vessels are summarized in Appendix B. Additional state and local laws that may apply are not the purview of this document."

Response to Comment # J-I-10:

Revisions to the draft BMP guidance document have resulted in the deletion of the sentence that is the focus of this comment. The final BMP guidance now incorporates the purpose and intent of Appendix B in the "Introduction" section of the guidance, and incorporates a revamped Appendix B later in the document. Now, Appendix B only identifies relevant federal "laws" for consideration because the possible audiences for the document include not only federal governmental agencies, but also State and private entities.

The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of

interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. On a case-by-case basis, additional federal statutes also may apply, though the federal statutes identified in Appendix B would be most relevant for the preparation of a vessel for use as an artificial reef.

State and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate State and local authorities to identify such further requirements.

For further information regarding the purpose and intent of Appendix B, *see Response to Comment # J-I-8*.

Comment # J-I-11:

Laws and regulations specific to the pollutants addressed should be included in those sections discussing the pollutants as was done with PCBs but unfortunately not with some other potential pollutants mentioned (asbestos, petroleum products).

Response to Comment # J-I-11:

With the exception of the discussion regarding materials containing PCBs regulated for disposal levels, EPA does not attempt to identify whether and how other environmental laws may “apply.” The BMP guidance document’s discussion of PCBs is the exception because EPA has promulgated specific regulations concerning their disposal.

Comment # J-I-12:

3. **Appendix B p.40.** The Army Corps permitting Authority is under the Rivers and Harbors Authorization Act of 1899 (the year “1866” is listed in the document for this Act).

Response to Comment # J-I-12:

EPA has incorporated the suggested change in the final guidance document.

Comment # J-I-13:

4. **Objectives of the Guidance Document p.7 Recommendation:** Objective 4 states: “include measures that will ‘enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels’” I would think that this BMP document would also enhance the utility of the artificial reef program of the U.S. Navy who has the authority to transfer vessels stricken from the Naval Vessel Register for use as artificial reefs. The navy’s program should be mentioned under this objective, if this is considered a broader document objective and not restricted to the Act that set forth the objectives.. On page 8 paragraph

2, once again only the Maritime Administration is mentioned when there is discussion about the BMPs enhancing artificial reefing as an option for disposing vessels. The Navy should not be excluded since it is now in the reefing business with the preparation of its reefing pilot project, the *Oriskany*.

Response to Comment # J-I-13:

EPA and MARAD developed this guidance document to satisfy Section 3516 of the National Defense Authorization Act (Act) for Fiscal Year 2004, which requires that MARAD and EPA jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. The BMP guidance is applicable to obsolete and decommissioned military and commercial vessels intended for use as artificial reefs. The Act specifically states that one of the objectives of the BMP guidance is to include measures that will “enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.” As the use of vessels as artificial reefs is becoming a more common management option for obsolete MARAD vessels, as well as Navy vessels, the BMP guidance document can also enhance the Navy’s artificial reefing program. The guidance is intended to promote a consistent, national approach for preparing vessels for use as artificial reefs. The development of this guidance is timely -- currently, no guidance of this kind is available.

Comment # J-I-14:

5. Salvageable portions of the vessel p. 8 second paragraph of second bullet.

Question/Clarification: The document recommends the removal of salvageable items first. It would seem that removal of salvageable items first would: 1) delay the more critical environmental cleaning and preparation process or interfere with the cleanup process if salvage were occurring simultaneously. In a donation situation, what is to prevent a salvager from stripping the vessel of all salvageable material (a labor intensive process that is time consuming and costs money and ultimately recoups only a fraction of the cost to clean a vessel) then stating that there are insufficient funds and resources to clean the vessel to the BMP standards? There is at least one documented case of a contractor leaving town after the vessel was stripped of salvageable material with the formal cleanup having barely started (first contractor on *Spiegel Grove* cleanup;). Assumptions made regarding money to be made on non ferrous metal in a fluctuating scrap market shouldn’t be a determining factor as to whether the vessel can be properly cleaned. Shouldn’t funds be available to fully cover the vessel environmental cleaning and preparation process, independent of what the contractor hopes to make off the scrap material? If, so then there shouldn’t be an issue of first cleaning the vessel to BMP standards, then once approved, allow the contractor to move into a salvage mode. I’d be interested in a response to this concept of reversing the process-cleaning first, salvage of materials after the cleaning is substantially complete and only then with clear direction and understanding between the contractor and the vessel owner of what can and cannot be removed for scrap. .

Response to Comment # J-I-14:

EPA recognizes that there are a number of initial vessel preparation approaches that could influence the time, effort, and cost of preparing/cleaning a vessel. The document recommends salvage operations prior to clean-up, as removing items for salvage eliminates the need to clean them in the vessel's preparations for sinking. Reversing the process, however, may result in an unnecessary expenditure of resources to clean items that will not remain on the vessel. EPA addressed the comment as follows:

“Some portions of a candidate vessel may be economically salvageable. Any such salvage operations should occur in a manner that will minimize debris and contamination with oils or other products that have to be cleaned up at a later date. This activity should allow for improved access for subsequent clean-up efforts, and the salvage proceeds may help offset some costs for vessel preparation.”

Salvage operations should not delay the environmental clean-up or preparation process. Rather they should facilitate the clean-up process and “allow for improved access for subsequent clean-up efforts.” The document in no way advocates relying on the sales of scrap material to fund the clean-up effort, but merely recognizes environmental and economic benefits from salvage operations/efforts.

Comment # J-I-15:

6. Author's last name incorrectly spelled in references cited, p.45: Recommendation:
Change Matore, R.M. to Martore, R.M.

Response to Comment # J-I-15:

The suggested change, as presented above, has been incorporated in the final guidance document.

Comment # J-I-16:

7. PCB disposal permit under 40 CFR 761.62(c) (p. 27). Recommendation: It is possible that there may be instances where a federal entity such as MARAD may not be responsible for the cleaning of a vessel and some other vessel donation recipient/ sponsor (state or local government) elects to seek a PCB disposal permit. I suggest that a paragraph should be added to discuss what is involved in actually securing an EPA PCB risk-based disposal permit. The paragraph makes it sound like there's no problem from a timeline, or cost standpoint and that nothing is really needed other than just asking for a permit. I think human health and environmental risk assessment issues should be discussed briefly and an explanation given of how that factors into EPA's deciding whether or not to issue a disposal permit. There are timeline, risk assessment preparation costs, other procedural and evaluation issues that must be taken into account particularly when dealing with non generic vessels, site locations, cultural/population differences etc. Without having a realistic sense of what is involved in procuring a PCB disposal permit, parties with lesser resources who assume they will save money leaving bulk solid PCB materials on board will be lulled into

believing that rapidly securing such a permit is a sure thing. Then they suddenly find themselves unable to meet requirements for extended dock rental associated with the time frame involved in evaluating a permit request and EPA protocol involved in actually issuing the document. It is conceivable the sponsor could find himself stuck halfway through a cleanup process for which no bulk disposal authorization is ever issued. The sponsor might then be unable to financially comply with requirements of removing all PCBs at levels of 50 ppm or greater because their vessel cleaning budget was dependent leaving PCB bulk materials on the vessel in order make the project economically viable. I also want to point out that this further highlights the disadvantage of a local government, a private sponsor or even a state receiving a vessel donation and embarking on a cleanup effort with without an upfront resolution as to the treatment of PCBs over 50 ppm proposed to be left on board.

Response to Comment # J-I-16:

EPA has revised the PCB chapter to include information on obtaining a risk-based PCB disposal approval. However, it is not practical to lay out a specific approval process, because each application is considered on its own merits and situation. The following information pertaining to securing an EPA PCB risk-based disposal approval has been incorporated in the PCB chapter of the final guidance document:

“While the complete removal of all manufactured products containing ≥ 50 ppm of solid PCBs is recommended, EPA recognizes that in some vessels it may not be feasible to identify and remove every such item. If such materials cannot be feasibly identified and/or removed, an application to EPA for a risk-based approval to dispose of the PCB bulk product waste in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.62(c). (EPA’s decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)”

The PCB chapter was revised further with the following information:

“Any vessel owner and/or sponsor should carefully consider the amount of time, resources and financial commitments necessary to address the identification, removal, and disposal of non-liquid PCB-containing materials and materials contaminated by spills of liquids containing PCBs before finally deciding if a vessel is suitable for reefing, and well in advance of commencing clean-up. EPA strongly recommends vessel owners and/or sponsors to begin discussions as soon as possible with the PCB coordinator for the EPA Region in which the vessel is proposed to be sunk. A list of EPA’s current PCB coordinators may be found at www.epa.gov/pcb/coordin.html.”

The PCB chapter revisions also include information pertaining to the disposal approval requirements for materials containing PCBs as a result of spills. The following information pertaining to securing an EPA PCB risk-based disposal approval has been incorporated in the PCB chapter of the final guidance document:

“If there is no information regarding whether a spill occurred and/or the PCB concentration of any spilled liquid, design and implement a representative sampling plan to verify that there are no PCBs present in the areas surrounding the liquid-filled equipment or systems. If the sampling results indicate presence of PCBs as a result of a spill of liquids containing PCBs, remove the spill residue and the materials contaminated by the spill (e.g., remove paint from a contaminated surface such as a metal deck, strip the contaminated area down to bare metal in accordance with 40 CFR 761.79(b)(i)(B)). If spill residues or materials contaminated by PCB spills cannot be feasibly removed, an application to EPA for a risk-based approval to dispose of the PCBs in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.61(c). (EPA’s decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)”

Further, EPA recommends that a vessel owner or buyer carefully consider the cost and resources needed prior to initiating a reefing project and to consult with EPA as soon as possible.

Comment # J-I-17:

These comments do not represent an agency wide response but are an individual submittal based upon my personal review of the BMPs.

Response to Comment # J-I-17:

As this letter later notes, the FWC previously submitted general agency comments on the BMPs to the Florida State Clearing House through the Florida Department of Environmental Protection as part of a federal consistency review (Under 15 CFR 930 Subpart C federal agencies are required to furnish a consistency determination for the state’s concurrence or objection). The letters submitted and the respective responses can be found under Commenter Identifications “M” and “M-I.”

Jon Dodrill, Environmental Administrator
Florida Fish and Wildlife Conservation Commission
Division of Marine Fisheries Management
2590 Executive Center Circle East (Berkley Bldg)
Tallahassee, FL 32301. Ph. 850.922.4340. x 209; Email: Jon.Dodrill@MyFWC.com

The FWC previously submitted general agency comments on the BMPs to the Florida State Clearing House through the Florida Department of Environmental Protection as part of a federal consistency review (Under 15 CFR 930 Subpart C federal agencies are required to furnish a consistency determination for the state’s concurrence or objection).

Docket ID: EPA-HQ-OW-2004-0003. *“Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.”* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0017

Author Date: October 1, 2004

Author: Carrie Selberg
Atlantic States Marine Fisheries Commission

Comment # K-1:

cselberg@asmfc.org

10/01/2004 11:03 AM

To: Group Ow-Docket@EPA

cc:

Subject: Attention Docket ID No. OW-2004-0003

Please see the attached comment letter regarding the Draft National guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs (Docket ID OW-2004-0003).

If you have any problems opening this attachment, please contact me. Thank you.

(See attached file: EPA_Oct04_Comment.doc)

Carrie Selberg

Atlantic States Marine Fisheries Commission

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Response to # K-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0017, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0018 (Commenter Identification “K-I”) for the comment letter submitted, and EPA’s response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *“Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.”* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0018

Author Date: October 1, 2004

Author: John V. O’Shea
Atlantic States Marine Fisheries Commission

Comment # K-I-1:

Atlantic States Marine Fisheries Commission

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John I. Nelson, Jr. (NH), Chair
Preston Pate, Jr. (NC), Vice-Chair

John V. O'Shea
Executive Director

Working towards healthy, self-sustaining populations for all Atlantic coast fish species, or successful restoration well in progress, by the year 2015.

October 1, 2004

Benjamin H. Grumbles
Acting Assistant Administrator, Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

Attention Docket: ID No. OW-2004-0003

Dear Mr. Grumbles:

Thank you for the opportunity comment on the *Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs*. We support nationwide consistent standards for vessel preparation and the release and finalization of this document.

Response to Comment # K-I-1:

EPA appreciates the Commission's consideration and commitment as we move forward to complete the final guidance document.

Comment # K-I-2:

The Atlantic coastal states working cooperatively through the Atlantic States Marine Fisheries Commission collectively manage the coastal fishery resources in state waters and many of our states have active artificial reef programs. We are currently working to develop a cooperative program with the Department of the Navy and the Maritime Administration to prepare ships under their respective authorities for deployment as artificial reefs. These best management practices are a critical element of this program. Some of our member states will be providing comments on your draft document and we ask that you take these into account.

Response to Comment # K-I-2:

EPA and MARAD developed this guidance document to satisfy Section 3516 of the National Defense Authorization Act (Act) for Fiscal Year 2004, which requires that

MARAD and EPA jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. The BMP guidance is applicable to obsolete and decommissioned military and commercial vessels intended for use as artificial reefs. The Act directs that one of the objectives of the BMP guidance is to include measures that will “enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.” As the use of vessels as artificial reefs is becoming a more common management option for obsolete MARAD vessels, as well as Navy vessels, the BMP guidance document can enhance the Navy’s artificial reefing program as well. The guidance is intended to promote a consistent, national approach for preparing vessels for use as artificial reefs. The development of this guidance is timely -- currently, no guidance of this kind is available.

The BMP guidance document has specific applicability to Navy vessel-to-reef projects. EPA notes that a provision of the Act amended Title 10 of the United States Code by adding Section 7306b. New Section 7306b(a) authorizes the Secretary of the Navy to transfer vessels stricken from the Naval Vessel Register for use as an artificial reef. New Section 7306b(c) requires the Secretary of the Navy to ensure that the preparation of a vessel transferred pursuant to 10 U.S.C. Section 7306b(a) for use as an artificial reef is conducted in accordance with the environmental best management practices developed pursuant to 16 U.S.C. Section 1220 note and applicable environmental laws. The final BMP guidance’s Appendix A, “*Federal Statutes Related to the Transfer of Obsolete MARAD and Navy Vessels for Use as Artificial Reefs*,” provides the complete text of Section 1013 of the National Defense Authorization Act for Fiscal Year 2004, as well as MARAD’s authority to transfer obsolete vessels for artificial reefing under 16 U.S.C. 1220, et. seq.

Comment # K-I-3:

Please let us know if the collective expertise of our Artificial Reef program managers can be of assistance in any future discussions your agency has regarding this issue. Our states would like to work closely with you as we move forward.

Response to Comment # K-I-3:

EPA appreciates the Commission’s offer and commitment as we move forward to complete the final guidance document.

Sincerely,



John V. O'Shea

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0019

Author Date: October 1, 2004

Author: John V. O'Shea
Atlantic States Marine Fisheries Commission

Comment # K-II-1:

Duplicate comment. Please see EPA-HQ-OW-2004-0003-0018.

Response to Comment # K-II-1:

Please refer to the response provided for EPA-HQ-OW-2004-0003-0018 (Commenter Identification "K-1").

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0020

Author Date: October 1, 2004

Author: Cindy Zipf
Clean Ocean Action

Comment # L-1:

"Cynthia Zipf (Clean Ocean Action)"

<Zipf@CleanOceanAction.org>

10/01/2004 05:01 PM

To: Group Ow-Docket@EPA

cc:science@CleanOceanAction.org, outreach@CleanOceanAction.org

Subject: Attention Docket ID No. OW-2004-0003

Thank you for the opportunity to comment.

Attached please find COA's

comments on the above referenced document. We look forward to your written reply.

Cindy Zipf

Executive Director

Clean Ocean Action

PO Box 505

Sandy Hook, NJ 07732

732-872-0111

732-872-8041 (fax)

Response to Comment # L-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0020, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0021 (Commenter Identification "L-I") for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0021

Author Date: October 1, 2004

Author: Cindy Zipf and Jennifer Samson
Clean Ocean Action

Comment # L-I-1:



Clean Ocean Action

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3419 Pacific Avenue
P.O. Box 1098
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Voice: 609-729-9262
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October 1, 2004
(Via Email)

Water Docket
USEPA
Mail Code 4101T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attn: OW-2004-0003

To Whom It May Concern:

Enclosed are comments on behalf of Clean Ocean Action (COA, representing 170 organizations), including the American Littoral Society, on the **USEPA Draft National Guidance: Best**

Management Practices for Preparing Vessels Intended to Create Artificial Reefs released August 2, 2004.

COA is pleased with the release of the draft Best Management Practices (BMP) as a positive step towards creating consistency in the management and regulation of artificial reef materials. The document does a fairly good job of identifying materials of concern and provides specific information on where to find such materials on vessels and how to remove them prior to placement. However, there are important issues of concern regarding contaminants and language. In general, there are a few statements that appear to contradict the concept of preparing vessels in an environmentally-responsible manner and some of the language in the document needs to be clarified to prevent ambiguity and possible abuse. These comments are addressed in more detail below, beginning with the relevant section of the document in bold typeface.

Response to Comment # L-I-1:

EPA appreciates Clean Ocean Action's commitment to improved marine environments as we move forward to complete the final guidance document. We intend to clarify the relevant language that may appear to be ambiguous as identified by Clean Ocean Action in Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0021.

Comment # L-I-2:

Contaminants Issues:

**1. Guidance for Preparation of Ships to create Artificial Reef Habitat
Section (beginning on Pg 14)**

The Environmental Impacts subsections in each of the six contaminant sections contain little or no information on the effects of the contaminants on marine organisms. This information can be found in Appendix C. ***It is essential that this vital information be moved up front into the body of the guidelines within the sections addressing "Environmental Impacts."*** It is imperative that reef managers and clean-up project managers are informed and aware of the impacts of these contaminants on marine communities and understand the importance of thoroughly removing them from the vessel or isolating them from marine life for the duration of the reef.

Response to Comment # L-I-2:

EPA recognizes the significance of moving information on the environmental impacts of the materials of concern called out in the guidance from Appendix C to the main body of the document. EPA decided, however, to retain the information contained in Appendix C as an appendix and not to incorporate it into the main body of the document, for the purpose of the appendix was for informational purposes only. The focus of the BMP guidance document is to provide guidelines for the preparation of obsolete and decommissioned military and commercial vessels in a manner that will help ensure that the marine environment will benefit from their use as artificial reefs.

The text provided in the draft BMP guidance document's Appendix C is an excerpt from the 2003 "Draft Policy Statement of the National Marine Sanctuary Program: Artificial Reef Permitting Guidelines" (2003 Draft Policy Statement). Please note that since the release of the draft BMP guidance document, the 2003 Draft Policy Statement is now a final document. Appendix C of the final BMP guidance document will provide information for the "2005 Policy Statement of the National Marine Sanctuary Program: Artificial Reef Permitting Guidelines."

Comment # L-I-3:

2. Oil and Grease Section (Pg 17, 3rd ¶)

It is not acceptable to leave dried/solidified oil and grease on the vessels as they can become re-suspended with exposure to seawater. All remnants of oil and grease should be cleaned and/or removed.

Response to Comment # L-I-3:

It may be acceptable to leave old oil and grease in place if it is determined visually to be dried/solidified and therefore is not likely to cause a sheen. EPA notes that as such, it is unlikely to become re-suspended with exposure to seawater. EPA has, however, revised the guidance in response to the above comment as follows:

"While the goal is to remove all oil and grease, it may be acceptable to leave old oil and grease in place if it is determined visually to be dried/solidified and therefore is not likely to cause a sheen."

Comment # L-I-4:

3. Asbestos Section (Pg. 21-23)

This section requires removal or encapsulating of certain asbestos and asbestos containing materials. However, on page 23 statements that allow some intact friable asbestos to remain on the vessel needs to be reconciled with statements in Appendix C regarding documented adverse effects of asbestos exposure on marine organisms, which also should include grazing and burrowing activities. In particular, the "very friable asbestos paste" and "friable asbestos" on pipe wrappings in the engine room would be expected to degrade in the marine environment.

Response to Comment # L-I-4:

The BMP guidance document states that "the primary source of friable asbestos is found on pipe wrappings around the main boilers and steam fittings." The guidance further states that "on most vessels the asbestos coating, which is 1 to 3 inches thick, is covered with canvas and is usually painted." This asbestos is in fact encapsulated, and as such, minimizes any potential direct impacts to the marine environment. As for the very friable asbestos paste, per the BMP guidance document, friable asbestos should be sealed as a precautionary measure to prevent releases of asbestos in high concentrations during the

sinking event. EPA has revised the BMP guidance document in response to the above comment as follows:

“Certain boilers and piping are covered with a very friable asbestos paste. If such friable asbestos is not covered with canvas and/or paint, the friable asbestos should be sealed or encapsulated with an epoxy or other non-water soluble and non-toxic sealer.”

Comment # L-I-5:

4. PCB Section (Pgs 25-27)

In keeping with the stated mission of the Artificial Reef program to “enhance marine resources and benefit the marine environment” any reference to the possibility of allowing PCB-contaminated solid materials to remain on the ship by obtaining a disposal permit should be omitted from this document. The document should clarify that NO PCB-containing materials should be allowed to remain on the ship. The decision to allow solid materials containing PCBs ≤ 50 ppm to remain on the ship is contradictory. PCBs have been shown to bioaccumulate in aquatic organisms and biotransfer through the food web and should not be purposely introduced into a habitat area especially one that is designed to attract fish and fisherman.

Response to Comment # L-I-5:

Under the current regulations at 40 CFR Part 761, manufactured products containing less than 50 ppm of solid PCBs are not regulated for disposal, and therefore, EPA cannot require their removal and disposal. PCB regulations require the removal and disposal of PCB bulk product waste containing PCBs ≥ 50 ppm.

Manufactured products containing ≥ 50 ppm of solid PCBs that are to be disposed are considered PCB bulk product waste. Disposal of PCB bulk product waste other than as specified at 40 CFR 761.62(a) or (b) is allowed only if EPA finds that the disposal will not result in an unreasonable risk to human health or the environment (40 CFR 761.62(c)). As the disposal of PCB bulk waste via the sinking of a vessel is not a method listed at 40 CFR 761.62(a) or (b), EPA would need to determine that this method does not pose an unreasonable risk. As part of its decision, EPA would consider, among other things, the persistent and bioaccumulative nature of PCBs.

The narrative goal in the BMPs for PCBs has been modified to include as a goal the removal of materials contaminated by PCB spills (PCB remediation waste). For PCB spills that occurred between April 18, 1978, and July 1, 1979, and where the original source was ≥ 500 ppm PCBs, EPA regulations require the removal of all materials currently contaminated at any concentration of PCBs. For PCB spills that occurred after July 1, 1979, and where the original source was or ≥ 50 ppm PCBs, EPA regulations require the removal of all materials currently contaminated at any concentration of PCBs. Additionally, EPA’s regulations require that all materials currently contaminated with ≥ 50 ppm PCBs as a result of spills (of any concentration, including spills that occurred prior to

April 18, 1978), be removed. As with the disposal of PCB bulk waste via sinking a vessel, disposal of PCB remediation waste other than as specified at 40 CFR 761.61(a) or (b) is allowed only if EPA finds that the disposal will not result in an unreasonable risk to human health or the environment and issues a risk-based disposal approval (40 CFR 761.61(c)).

Comment # L-I-6:

Language Issues:

1. Placement of a vessel to create an artificial reef should: (Pg. 11)

Bullet 5: The use of the term “minimize” in reference to environmental, personal and public health risks is too vague and may allow interpretation that is contradictory to the intentions of this document.

Response to Comment # L-I-6:

EPA has clarified what is meant by “minimize” in this context by revising the text in question to now read:

“Placement of a vessel to create an artificial reef should minimize the potential for environmental risks related to site locations.”

Comment # L-I-7:

Bullet 7: It is not clear how “best information available” will be used.

Response to Comment # L-I-7:

In response to this comment, EPA clarified the text in question as follows:

“Placement of a vessel to create an artificial reef should be based on scientific information.”

Comment # L-I-8:

2. Siting of Artificial Reefs (Page 11, 2nd ¶)

“Artificial reefs *should not cause harm to existing living marine resources and habitats.*”

The statement “should not cause harm” suggests something significantly less rigorous than “enhance marine resources and benefit the marine environment” which is stated as primary mission in the **Executive Summary (Page 5, 2nd ¶)** and throughout the document.

Response to Comment # L-I-8:

In response to this comment, EPA clarified the text in question as follows:

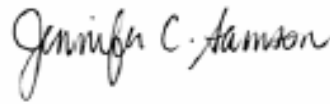
“Because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resource, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats.”

The incorporation of our comments into the final BMP would ensure proper protection of the marine environment and result in a document that COA would encourage state and federal agencies to adopt as part of their artificial reef programs.

Sincerely,



Cindy Zipf
Executive Director, COA



Jennifer Samson
Principal Scientist, COA

And for:
Tim Dillingham
Executive Director
American Littoral Society

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0022

Author Date: October 1, 2004

Author: Lauren P. Milligan
Florida State Clearinghouse
Florida Department of Environmental Protection

Comment # M-1:

"Milligan, Lauren"

<Lauren.Milligan@dep.state.fl.us>

10/01/2004 05:09 PM

To: Group Ow-Docket@EPA
cc: Laura-S Johnson/DC/USEPA/US@EPA
Subject: Attn: EPA Docket ID No. OW-2004-0003
Ms. Laura S. Johnson

Marine Pollution Control Branch (4504T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: EPA Docket ID No. OW-2004-0003

Environmental Protection Agency - Public Notice - Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs - Notice of Availability and Request for Comments
SAI #: FL200408108824C

Dear Ms. Johnson:

Please see the attached file for the State of Florida's comments on the referenced draft guidance document. An original and three hard copies will be mailed to the EPA Water Docket address.

Thank you for the opportunity to review this proposal. If you have any questions or need additional information, please contact me at (850) 245-2170.

Sincerely,
Lauren P. Milligan, Environmental Consultant
Florida State Clearinghouse
Florida Department of Environmental Protection
3900 Commonwealth Blvd, Mail Station 47
Tallahassee, Florida 32399-3000
ph. (850) 245-2170
fax (850) 245-2190

Response to Comment # M-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0022, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0023 (Commenter Identification "M-I") for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0023

Author Date: October 1, 2004

Author: Sally B. Mann
Office of Intergovernmental Programs,
Florida Department of Environmental Protection

Brian S. Barnett
Office of Policy and Stakeholder Coordination
Florida Fish and Wildlife Conservation Commission

Comment # M-I-1:



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Colleen M. Castille
Secretary

October 1, 2004

Ms. Laura S. Johnson
Marine Pollution Control Branch (4504T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Environmental Protection Agency – Public Notice – Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs – Notice of Availability and Request for Comments

SAI #: FL200408108824C

Dear Ms. Johnson:

The Florida State Clearinghouse, pursuant to Presidential Executive Order 12372 and Gubernatorial Executive Order 95-359 has coordinated a review of the referenced Draft National Guidance document. The following comments from the Florida Department of Environmental Protection (DEP) and the summarized and enclosed comments from the Florida Fish and Wildlife Conservation Commission (FWC) outline the issues of concern to the State of Florida and should assist you with the development of the final document.

The Florida Department of Environmental Protection supports the development of strong, consistent national requirements and best management practices (BMPs) for creating artificial reefs from obsolete/decommissioned vessels that provide maximum protection of environmental and human health. The DEP supports re-use and recycling of vessel components where possible

and is encouraged that this recommendation is included in the general principles for vessel cleanup. Reefing should not be the sole or primary means of vessel disposal, however, and should only occur when it can be clearly demonstrated that environmental and human health will not be compromised.

Response to Comment # M-I-1:

As mentioned in the draft BMP guidance document, several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The BMP guidance document only discusses the vessel management option of artificial reefing.

The use of the BMP guidance document will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs. The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources.

The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negative impacts to the environment. The clean-up performance goals provided in the BMPs, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

The best management practices described in the BMP guidance document will serve as national guidance for the preparation of vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for decommissioned and obsolete MARAD and Navy vessels, the development of this guidance is timely. Currently, no guidance of this kind is available.

Comment # M-I-2:

The draft BMPs recognized that planning (including siting), long-term monitoring, and evaluation are necessary components of each specific project. The DEP supports this critical part of the BMPs and encourages the planning for and inclusion of adequate funding to accomplish success of the project, as well as to assist in decision-making for future projects. It should be recognized, however, that each reefing project is unique and some information obtained from a specific reefing activity and subsequent monitoring may

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Ms. Laura S. Johnson
October 1, 2004

not be applicable to all future vessel reefing projects. For this reason, EPA should consider developing a broad-based management and monitoring program for vessel reefs to assess their long-term durability, stability, habitat value and chemical and biological conditions.

Response to Comment # M-I-2:

Though it is beyond the scope of this document to provide details on the monitoring aspects of any particular vessel-to-reef project, the BMP guidance document describes the importance of planning (including siting), long-term monitoring, and evaluation as necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. In addition, the following text was included in the final version of the BMP guidance document:

“Project planners should evaluate vessel-to-reef projects with regard to chemical and biological considerations as well as long-term durability and stability, as it might relate to future habitat value.”

Comment # M-I-3:

In the discussion of PCBs, the document recognizes that the cost of sampling and analysis necessary to determine whether components of equipment contain PCBs ≥ 50 ppm, may well exceed the cost for removal and disposal of those items. The DEP recommends that the final BMPs include language requiring that the affected components or equipment be removed when the cost of PCB sampling and analysis is comparable to the cost of removal and disposal.

Response to Comment # M-I-3:

Because the BMP document is guidance, it cannot require a party to take a given action. The draft guidance document states that “because PCB sampling and analytical procedures can be expensive and time consuming, there may be situations when the cost of sampling and analysis far exceed the cost for removal and disposal.” The final guidance further states that “in some cases, vessel-to-reef projects have shown that removal of all electrical cables and wires suspected of containing PCBs was the most economical course of action.” The final guidance states that “where there is reason to suspect that equipment or manufactured products containing solid PCBs may contain PCBs ≥ 50 ppm, either remove the equipment or component from the vessel, or provide proof that the equipment or component is free of PCBs, unless a PCB bulk product waste disposal approval has been obtained under 40 CFR 761.62(c).”

Keep in mind the PCB regulations at 40 CFR 761 require the proper disposal of all PCB bulk product waste. In lieu of sampling and analysis, the equipment or manufactured items on the ship are assumed to contain solid PCBs ≥ 50 ppm, and therefore must be disposed of as PCB bulk product waste (pursuant to 40 CFR 761.62), unless information that the items are free of PCBs can be provided.

Comment # M-I-4:

While the BMPs are being developed specifically for preparing vessels for use as artificial reefs, the document also recommends that the BMPs be used, at a minimum, as guidance for preparing vessels for other in-water uses. In general, the DEP concurs that the BMPs be used for all vessels being placed in the ocean, regardless of the reason for placement, except for the use of vessels as breakwaters. The DEP does not recommend the use of an obsolete/decommissioned vessel as a breakwater, because such use would require more rigorous stability evaluations and preparation.

Response to Comment # M-I-4:

EPA accepts this comment and deleted text referring to the placement of vessels to serve as breakwaters from the guidance (see also *Response to Comment # J-I-5*).

Comment # M-I-5:

The DEP also notes that deployment of vessels as artificial reefs within state territorial waters requires Environmental Resource Permits under Chapter 373, *Florida Statutes*, and easements from the State of Florida Board of Trustees of the Internal Improvement Trust Fund in accordance with Chapter 253, *Florida Statutes*. For deployment in state waters, the applicant must provide reasonable assurance that the project is not contrary to the public interest and will not violate water quality standards. The applicant must also comply with the requirements and conditions considered during the state's review of the environmental resource permit application.

Response to Comment # M-I-5:

The BMP guidance document does not substitute for any statute or regulation, nor is it a regulation itself. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity. Among other things, the document includes mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels. It should be noted, however, that under 10 U.S.C. 7306b(c), the Secretary of the Navy must ensure that, prior to transfer of a vessel stricken from the Naval Vessel Register, preparation of a vessel for use as an artificial reef needs to be conducted in accordance with the environmental best management practices in this guidance, as well as "any applicable federal laws." Appendix B identifies selected federal statutes relevant for consideration in preparation of a vessel for use as an artificial reef. Further, other than siting considerations that would affect how a vessel is prepared for use as an artificial reef, the guidance does not detail the legal requirements applicable to transfer, siting, or sinking of vessels as artificial reefs, except for the overview offered in Appendix B. The information in the Appendix is intended only for the convenience of the reader in offer to provide a useful starting point for identifying the principal environmental statutes of interest. State and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate State and local authorities to identify further requirements.

This document is not focused solely on the preparation of military vessels intended to be sunk as artificial reefs. This document addresses the preparation of both obsolete and decommissioned military and obsolete commercial vessels when employing the vessel management option of artificial reefing. Although the BMP guidance acknowledges that there are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing, these are not highlighted in this document, except for the overview provided in Appendix B that presents principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef.

Comment # M-I-6:

The Florida Fish and Wildlife Conservation Commission indicates that consistent national standards for the environmental preparation of vessels intended as artificial reefs have been specifically recommended by the State of Florida, are greatly needed, and are strongly supported by the FWC. The FWC has provided specific comments regarding the assessment of asbestos and sampling/removal of PCBs on vessels prepared for deployment. The final guidance document should mention that qualified asbestos inspectors should be used to identify the type and location of asbestos on board any vessel.

Response to Comment # M-I-6:

In response to the comment, EPA revised the BMP guidance as follows:

“Asbestos can be found throughout ships, from the top of the bridge to the bilge. Identifying the locations and types of asbestos onboard early in the clean-up process is essential for vessel preparation and may involve qualified asbestos inspectors. Once the type and location of asbestos and asbestos-containing materials are identified, a determination should be made whether to remove, encapsulate, or leave the asbestos undisturbed.”

Comment # M-I-7:

Additional information on the probability of encountering PCBs on certain ships, the level of PCB testing needed, and the securing of PCB disposal permits should also be provided. Please refer to the enclosed FWC letter for further details and information.

Response to Comment # M-I-7:

The occurrence of PCBs on ships is neither predictable nor consistent. The guidance lists items suspected or known to contain regulated levels of PCBs and where on ship they might be found. This is a guidance document and cannot require a party to take a given action. The PCB regulations require the proper disposal of PCB bulk product waste. In lieu of sampling and analysis, the manufactured items on the ship are assumed to contain solid PCBs ≥ 50 ppm and, consequently, must be removed and disposed of as PCB bulk

product waste (pursuant to 40 CFR 761.62). EPA has included in the final guidance document a discussion on the risk-based disposal approval process for both PCB bulk product waste (40 CFR 761.62(c) and materials containing PCBs as a result of spills (40 CFR 761.61(c)).

Comment # M-I-8:

The State of Florida has no objection to the issuance of guidance for preparing vessels for reefing as described in the draft BMP document.

Response to Comment # M-I-8:

EPA appreciates the State of Florida's consideration as we move forward to complete the final guidance document.

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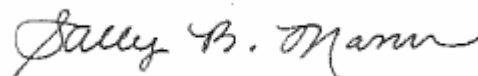
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Ms. Laura S. Johnson
October 1, 2004
Page 3 of 3

Florida will carefully evaluate individual proposals covered by final BMPs to ensure adequate protection of marine resources and human health. The evaluation will consider the specific aspects of the proposed activity; the environmental details of the specific areas in which the activity will be conducted; areas that may be affected by the proposed activity; potential impacts resulting from planned activities and accidental events; and other applicable factors. All federal agency activities, as defined in 15 CFR 930, that rely on the BMP guidance will be subject to consistency review by the state under the Coastal Zone Management Act.

Thank you for the opportunity to comment on the Draft National Guidance document. Should you have any questions, please contact Ms. Debby Tucker or Ms. Lauren Milligan at (850) 245-2163.

Sincerely,



Sally B. Mann, Director
Office of Intergovernmental Programs

SBM/dt

Enclosures

cc: Jon Dodrill, FWC, DMFM
Brian Barnett, FWC, OPSC
Thomas Seal, DEP, DWRM

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September 20, 2004

Ms. Lauren Milligan
Environmental Consultant
Florida State Clearinghouse
Department of Environmental Protection
3900 Commonwealth Boulevard, MS 47
Tallahassee, FL 32399-3000

RE: SAI #FL200408108824C, Review of Draft
National Guidance: Best Management
Practices (BMPs) for Preparing Vessels
Intended to Create Artificial Reefs

Dear Ms. Milligan:

The following comments are provided by the Florida Fish and Wildlife Conservation Commission's (FWC) state artificial reef program housed within the Division of Marine Fisheries Management. The comments are in support of a Florida State Clearinghouse Coastal Zone Management Act/Florida Coastal Management Program consistency evaluation and a request for comments by the U.S. Environmental Protection Agency (EPA). The comments are based on a review of the Federal draft document entitled: "Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs" (June 24,

2004). The document was drafted and edited during 2003-04 by a working group composed of representatives from the EPA, U.S. Navy, U.S. Maritime Administration, U.S. Coast Guard, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration, and U.S. Army Corps of Engineers. The document was noticed in the Federal Register, Vol. 69, No.147 Monday, August 2, 2004, with a sixty-day public comment period.

Comment # M-I-9:
General Comments

The EPA-MARAD vessel cleaning best management practices (BMPs) are badly needed and long awaited guidelines. The concept of consistent national standards of environmental preparation of vessels to serve as artificial reefs has been specifically recommended by Florida as well as other states and interstate fisheries management commissions. Although clean-up guidelines and standards for ocean disposal of vessels as artificial reefs had been established by Environment Canada in 1998, consistent national guidance for the environmental preparation of **both** military and commercial/private vessels proposed to be used as artificial reefs up to now

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Ms. Lauren Milligan
Page 2
September 20, 2004

has been lacking in the U.S. Despite the fact that in Florida alone at least 28% of the state's more than 2,000 recorded public artificial reef deployments have been vessels of varying sizes (30-510 feet in length), there has been no consistent environmental preparation guidance and standards for cleaning vessels. The exception has been a varying degree of pre-sinking inspection by some local Coast Guard Marine Safety Offices. They have generally limited themselves to requesting removal of floatables, petroleum products, and ensuring sufficient seaworthiness of the vessel to be towed to the sinking site. In the past, the periodic transfer of Coast Guard personnel who served as pre-reefing vessel inspectors resulted in little guidance for predecessors, since there were often no written standards that addressed environmental cleaning issues, particularly for larger vessels. In Florida's case, the heavy reliance by coastal local governments on civilian volunteers and small commercial operations to clean coastal freighters and private vessels as rapidly and inexpensively as possible, and with varying degrees of oversight and no consistent cleaning protocol, has resulted in variation in the degree of environmental preparation of a vessel before it was sunk.

Currently, FWC has no language in its artificial reef rules (68E-9 Florida Administrative Code) or statute (s. 370.25 Florida Statutes) that describe in detail what constitutes a "clean steel hulled vessel" and what steps must be undertaken to make such a vessel clean prior to sinking as an artificial reef. In 2001, FWC in cooperation with the Florida Department of Environmental

Protection (DEP), developed and presented to the FWC Commissioners for subsequent approval a policy paper entitled "Policy Issues Relating to the Use of Large Vessels as Artificial Reef Material in Florida". The document (p.3) stated: "In recent years FWC and DEP staff have become increasingly concerned over inconsistencies in cleaning and ship sinking preparation standards and inspections, issues related to identification, handling and removal of hazardous materials on board vessels, vessel seaworthiness during tow, proper siting, stability during major storm events, expense, user conflicts, diver safety, effectiveness as habitat, and sport fish restoration value." One of the policy issues of concern was standards and consistency for vessel cleaning, preparation, stability, and siting. A specific recommendation of this FWC-DEP document was: "Recommend that as part of a coordinated national ship sinking plan that the U.S. EPA, in conjunction with the USCG and other agencies develop a consistent and detailed artificial reef vessel cleaning, preparation and inspection protocol" (paragraph h, p. 15). In a joint Gulf and Atlantic States Marine Fisheries Commissions document (*Guidelines for Marine Artificial Reef Materials, 2nd edition, No.121, January 2004*), the publication stated (p. 41): "The Commissions should continue to press for a comprehensive set of vessel cleaning and preparation standards that would apply uniformly to both federally donated military vessels and civilian vessels procured from the private sector".

In summary, as a general comment, the development of national guidance in the environmental preparation of vessels to be used as artificial reefs as required under Section 3516 of the National Defense Authorization Act (2004) is an action strongly supported by the FWC.

Response to Comment # M-I-9:

EPA appreciates Florida's Fish and Wildlife Conservation Commission's consideration as we move forward to complete the final guidance document. The best management practices described in the BMP guidance document will serve as national guidance for the preparation of vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for obsolete MARAD vessels, as well as decommissioned Navy vessels, the development of this guidance is timely. Currently, no guidance of this kind is available.

Ms. Lauren Milligan
Page 3
September 20, 2004

Comment # M-I-10:

BMP Specific Comments:

Asbestos

On page 23 the BMPs state: "Asbestos can be found throughout ships from the bridge to the bottom of the bilge. Identifying the locations and types of asbestos onboard are essential for vessel preparation and should be considered early in the clean up process". However, no mention is made

regarding the credentials/certifications required of the individuals who would identify these various asbestos materials.

Response to Comment # M-I-10:

EPA accepts this comment. Please see *Response to Comment # M-I-6* for the revisions that have been incorporated in the final BMP guidance document.

Comment # M-I-11:

Additionally, if any explosives are used in the sinking of the vessel or the vessel undergoes any structural modifications required for sinking, then the vessel itself becomes a facility demolition project under the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) (see p. 41 *Guidelines for Marine Artificial Reef Materials, 2004*).

Response to Comment # M-I-11:

The method of demolition is particularly important to the effective management of asbestos onboard ships. With regard to ship preparation, the guidance document states that if the vessel sinking method includes the use of explosives, asbestos-containing material that may become disturbed during detonation should be removed from the vessel. The guidance document further states that any asbestos that has been moved or disturbed (including during clean-up operations) or can potentially get dislodged as the vessel sinks should be removed from the vessel. The guidance presents this clean-up goal only in context of vessel preparation for a vessel-to-reef project, not actual sinking itself.

Comment # M-I-12:

In Florida, for state and federally funded vessel artificial reef projects, FWC requires an EPA or Florida DEP air quality specialist or a designated certified consultant with asbestos experience to conduct an asbestos assessment of a vessel prior to sinking. Mention should be made in the BMPs that qualified asbestos inspectors should be used in identifying the type and location of asbestos on board the ship. The owner, contractor, or project sponsor may not have the personal expertise to identify asbestos containing materials, their category, and whether they are regulated.

Response to Comment # M-I-12:

Please see *Response to Comment # M-I-6* for the revisions incorporated in the final guidance document.

Comment # M-I-13:

Even though the document states that it is not its intent to focus on regulatory requirements, pertinent asbestos related federal regulations, as was done in the PCB section of the guidelines, should be listed for reference.

Response to Comment # M-I-13:

With the exception of materials containing PCBs regulated for disposal, EPA did not attempt to elaborate on other federal, State, or local regulations, although those requirements that are directly applicable to vessel preparation in the context of the clean-up performance goals must also be met prior to vessel sinking and placement. Elaboration on PCBs was the exception because TSCA regulates the disposal of PCBs.

Comment # M-I-14:

PCBs (p. 25)

This document should state whether or not it is reasonable to assume that any ship, military or civilian, built after 1979 would not have either solid or liquid PCBs on board, and whether or not civilian vessels built prior to 1979 should be presumed to have PCBs on board that would trigger sampling requirements.

Response to Comment # M-I-14:

EPA does not have the necessary data to make the assumption or finding that ships, civilian or military, constructed after 1979 do not contain materials with regulated levels of PCBs. The PCB regulations at 40 CFR 761 do not require sampling and analysis; therefore, it is not possible to provide specific sampling and analytical plans for ships. In addition, due to the design, layout, and configuration differences between classes of ships and individual ships, it is not practical or possible to design a single generic sampling and analysis plan. EPA recommends consulting with our Regional PCB coordinators when considering sampling and analytical plans. For further discussion regarding presence of PCBs onboard vessels and PCB sampling requirements, see *Response to Comment # M-I-7*.

Comment # M-I-15:

Some statement of the minimum number of PCB samples required for a vessel should be made, as well as the type of PCB testing needed.

Response to Comment # M-I-15:

The PCB regulations at 40 CFR 761 do not require sampling and analysis; therefore, it is not possible to layout specific sampling and analytical plans for ships. In addition, due to the design, layout and configuration differences between classes of ships and individual ships, it is not practical or possible to design a single generic sampling and analysis plan. EPA recommends consulting with our Regional PCB coordinators when considering sampling and analytical plans. For further discussion regarding presence of PCBs onboard vessels and PCB sampling requirements, see *Response to Comment #s M-I-7 and M-I-14*.

Comment # M-I-16:

Vessel preparation can't be addressed until it is known what the PCB levels are in the suspect materials on board.

Response to Comment # M-I-16:

PCB levels of materials found onboard vessels that are intended to serve as artificial reefs have a direct influence on the vessel preparation required from the PCB perspective. For further discussion regarding presence of PCBs onboard vessels see *Response to Comment #s M-I-7 and M-I-14*.

Per the draft guidance document, where there is reason to suspect that equipment or manufactured products containing solid PCBs may contain PCBs ≥ 50 ppm, either remove the equipment or component from the vessel, or provide proof that the equipment or component is free of PCBs, unless a PCB bulk product waste disposal approval has been obtained under 40 CFR 761.62(c). Because PCB sampling and analytical procedures can be expensive and time-consuming, there may be situations when the cost of sampling and analysis far exceeds the cost for removal and disposal. In some cases, vessel-to-reef projects have shown that removal of all electrical cables and wires suspected of containing PCBs is the most economical course of action. For further discussion regarding PCB sampling requirements, see *Response to Comment #s M-I-7 and M-I-14*.

Comment # M-I-17:

However, if no civilian and all post-1979 model military vessels no longer have PCBs, this should be mentioned to avoid unnecessary sampling for PCBs that are not there.

Response to Comment # M-I-17:

EPA does not have the necessary data to make the assumption or finding that ships, civilian or military, constructed after 1979 do not contain materials with regulated levels of PCBs. The PCB regulations at 40 CFR 761 do not require sampling and analysis; therefore, it is not possible to detail specific sampling and analytical plans for ships. In addition, due to the design, layout and configuration differences between classes of ships and individual ships, it is not practical or possible to design a single generic sampling and analysis plan. EPA recommends consulting with EPA's Regional PCB coordinators when considering sampling and analytical plans. For further discussion regarding presence of PCBs onboard vessels and PCB sampling requirements, see *Response to Comment #s M-I-7, M-I-14, and M-I-16*.

Comment # M-I-18:

P. 27. The statement is made that "EPA recognizes that non-liquid PCBs may be difficult to locate and remove and that removal may jeopardize the integrity of the ship." Since the only integrity issue pertinent to deploying a vessel as an artificial reef is that the vessel have sufficient external water-tight hull integrity to safely make the tow to a reef site, how would the removal of bulkhead insulation, wire cable, felt gaskets, or other interior PCB containing material adversely impact external hull water-tight integrity where no through-hull holes are made?

Response to Comment # M-I-18:

It may be possible to remove bulkhead insulation, wire cable, felt gaskets, and other interior PCB bulk product waste while not adversely impacting the water-tight integrity of the vessel. For this reason, the guidance document has been revised so that language indicating that the removal of any non-liquid PCBs “jeopardizes the integrity of the ship” has been removed. However, the final BMP guidance document will still state that “while the complete removal of all manufactured products containing ≥ 50 ppm of solid PCBs is recommended, EPA recognizes that in some vessels it may not be feasible to identify and remove every such item.” The final guidance will further state that “[i]f such materials [PCB bulk product waste or PCB remediation waste] cannot be feasibly identified and/or removed, an application to EPA for a risk-based approval to dispose of the PCB bulk product waste in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.62(c).” For further discussion regarding revisions specific to vessel preparation with respect to PCBs, see *Response to Comment # M-I-20*.

Comment # M-I-19:

The salvage of nonferrous metals and machinery for recycling, which commonly occurs throughout a ship to recover some of the costs of the vessel clean-up, would be at least as intrusive.

Response to Comment # M-I-19:

The final BMP guidance document addresses the potential impacts of removing salvageable materials from a vessel. The BMP guidance document suggests that “operations associated with salvage, clean-up, and diver access have the potential to adversely impact vessel stability. Failure to consider the impact of these activities on vessel stability before and during scuttling operations could result in premature and uncontrolled capsizing and/or sinking of the vessel. Therefore, vessel stability considerations should be an integral part of the salvage, clean-up, modification (for diver access), transport, and sinking plans of a vessel-to-reef project.” For discussions regarding PCB removal and impacts to vessel integrity, see *Response to Comment #s M-I-18* and *M-I-20*.

Comment # M-I-20:

We suggest a replacement statement: "EPA recognizes that non-liquid PCBs may be difficult to remove in their entirety. Removal of all materials containing PCBs at or above 50 ppm in some vessel types may not prove cost-effective for the vessel owner or sponsor. PCB disposal permits are based on human health and environmental risk assessments, and are not automatically issued. Any vessel owner or sponsor should carefully assess its financial ability to address solid PCB

September 20, 2004

removal issues well in advance of commencing cleanup efforts on a vessel, and not assume that a risk-based PCB disposal permit will be automatically forthcoming."

Response to Comment # M-I-20:

EPA added language similar to the proposed language in the final guidance document. EPA made the appropriate modifications to the PCB chapter of the document under the section "How should the vessel be prepared; what are the appropriate BMPs for PCBs?" More specifically, the comment is addressed as follows:

"While the complete removal of all manufactured products containing ≥ 50 ppm of solid PCBs is recommended, EPA recognizes that in some vessels it may not be feasible to identify and remove every such item. If such materials cannot be feasibly identified and/or removed, an application to EPA for a risk-based approval to dispose of the PCB bulk product waste in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.62(c). (EPA's decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)"

The PCB chapter was revised further with the following information:

"Any vessel owner and/or sponsor should carefully consider the amount of time, resources and financial commitments necessary to address the identification, removal and disposal of non-liquid PCB-containing materials and materials contaminated by spills of liquids containing PCBs before finally deciding if a vessel is suitable for reefing, and well in advance of commencing clean-up. EPA strongly recommends vessel owners and/or sponsors begin discussions as soon as possible with the PCB coordinator for the EPA Region in which the vessel is proposed to be sunk. A list of EPA's current PCB coordinators may be found at www.epa.gov/pcb/coordin.html."

The PCB chapter revisions also include information pertaining to the disposal approval requirements for materials containing PCBs as a result of spills. The following information pertaining to securing an EPA PCB risk-based disposal approval has been incorporated in the PCB chapter of the final guidance document:

"If there is no information regarding whether a spill occurred and/or the PCB concentration of any spilled liquid, design and implement a representative sampling plan to verify that there are no PCBs present in the areas surrounding the liquid-filled equipment or systems. If the sampling results indicate presence of PCBs as a result of a spill of liquids containing PCBs, remove the spill residue and the materials contaminated by the spill (e.g., remove paint from a contaminated surface

such as a metal deck, strip the contaminated area down to bare metal in accordance with 40 CFR 761.79(b)(i)(B)). If spill residues or materials contaminated by PCB spills cannot be feasibly removed, an application to EPA for a risk-based approval to dispose of the PCBs in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.61(c). (EPA's decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)"

Further, EPA recommends that any vessel owner or buyer carefully consider the cost and resources needed prior to initiating a reefing project, and further, to consult with EPA as soon as possible.

Comment # M-I-21:

The BMPs give the reader the impression that all one has to do to leave PCBs in excess of 50ppm in solid materials on board a ship is to secure a PCB disposal permit from the EPA. The reader needs to be advised by EPA in this document exactly what is involved in securing such a disposal permit, the time line involved, and that such a permit may have special conditions that would be challenging for a sponsor to meet. There should be some specific mention of risk-based human health and environmental assessment requirements as part of requesting a PCB disposal permit.

Response to Comment # M-I-21:

EPA added a discussion of the risk-based disposal approval in the final guidance document. See *Response to Comment #s J-I-16 and M-I-20* for details regarding the modifications.

If you have any questions regarding these comments, please contact me, or Mr. Jon Dodrill, FWC's Artificial Reef Program Administrator, at 850-488-6058.

Sincerely,



for

Brian S. Barnett, Director
Office of Policy and Stakeholder Coord.

bsb/tgw
u:\traci.wallace\sai 8824c.doc
ENV 1-2-3
cc: Mr. Jon Dodrill

Docket ID: EPA-HQ-OW-2004-0003. “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0024

Author Date: October 4, 2004

Author: Anonymous

Comment # N-1:

The primary author’s name has been misspelled on the South Carolina DNR PCB study. The correct spelling is MARTORE. This name has been misspelled in the text and in the References.

Response to Comment # N-1:

EPA incorporated the suggested change from the comment in the final guidance document.

Docket ID: EPA-HQ-OW-2004-0003. “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0025

Author Date: October 1, 2004

Author: Richard Gutierrez
Basel Action Network

Comment # O-1:

"R. Gutierrez" <rgutierrez@seanet.com>

10/01/2004 07:28 PM

To: Laura-S Johnson/DC/USEPA/US@EPA, Group Ow-Docket@EPA

cc: Jim Puckett <apex@seanet.com>

Subject: BAN Comments on the Draft Reefing Guidance

Dear Ms. Johnson,

Please find attached comments of the Basel Action Network on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.

If there are any problems with the attached pdf. documents please let us know.

Thank you very much.

Yours sincerely,

Richard Gutierrez
Basel Action Network
1305 4th Ave., Suite 606
Seattle, Washington 98101
Tel. (206) 652 57 51; Fax (206) 652 57 50
www.ban.org

Response to Comment # O-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0025, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0026 (Commenter Identification # “O”) for the comment letter submitted, and EPA’s response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0026

Author Date: October 1, 2004

Author: Richard Gutierrez and Jim Puckett
Basel Action Network



turn back the toxic tide

C/O Asia Pacific Environmental Exchange
1305 Fourth Avenue, Suite 606
Seattle, Washington 98101
Telephone 206 652-5555 Web: www.ban.org

October 1, 2004

Water Docket
Environmental Protection Agency
1200 Pennsylvania Avenue, NW.
Washington, DC 20460,

Attention: Docket ID No. OW-2004-0003

To Whom It May Concern:

In response to the request for public comments on the **Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs** (Reefing Guidance), 69 Fed. Reg. 46141 (Aug. 2, 2004), please find our comments enclosed.

Sincerely yours,

Jim Puckett, Richard Gutierrez

Comments on the Draft National Guidance for Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs

Prepared by the Basel Action Network (BAN)

October 1, 2004

Comment # O-I-0:

I. Introduction

The Basel Action Network (BAN) is an international non-profit environmental organization whose core mission is the prevention of toxic trade – the trade in toxic wastes, products, and technologies and the promotion of a toxics free world. Toxic trade exploits free markets and the globalization movement to transfer pollution and its costs to some of the world's most impoverished and disempowered communities while allowing polluters to avoid upstream solutions and responsibility for creating the pollution in the first instance.

GENERAL RESPONSE # O-I-0 TO BASEL ACTION NETWORK COMMENTS:

The document which is the subject matter of the Basel Action Network's (BAN) comments (*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs*) was prepared in response to a Congressional directive (§ 3516 of P.L. 108-136) calling for the development of guidance on preparation of vessels for use as artificial reefs. That provision directs the U.S. Maritime Administration (MARAD) and the U.S. Environmental Protection Agency (EPA) to jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. It also provides that the environmental best management practices shall:

- Include recommended practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs;
- Promote consistent use of such practices nationwide;
- Provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs; and
- Include mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.

Many of the specific comments by BAN express opposition to, or concern with, artificial reefing itself, express a preference for use of alternatives for managing obsolete and decommissioned vessels other than artificial reefing, express concern that the document somehow undermines development or use of such alternatives, or address a variety of regulatory and permitting matters under domestic law or international treaties. At the outset, EPA notes that many of these comments address matters that are outside the purpose and scope of the document required by § 3516 of P.L. 108-136. The final BMP guidance document in no way authorizes or implies authorization of any placement of vessels as artificial reefs, which can only occur after necessary regulatory authorizations

are obtained and in compliance with applicable environmental laws. Many such authorizations involve permitting processes that include the opportunity for public comment on whether placement of the artificial reef should be permitted, and if so, under what conditions. For further discussion, see *Response to Comment # O-I-67* below.

Further, the guidance document itself makes clear that:

- It does not contain or substitute for any statute or regulation nor does it impose binding requirements. See e.g., June 24, 2004 “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs” (Draft BMP guidance document), pg 9.
- With the exception of materials containing PCBs, it does not interpret the applicability or implementation of any other federal, State, or local statutes or regulations. Draft BMP guidance document, pp 9 and 26.
- The final preparation plan for any particular artificial reef project is case-specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations. *Id.*
- The BMPs are intended for use when preparing vessels to serve as artificial reef habitat at permitted sites (Draft BMP guidance document, pg 7) and to foster “the preparation of vessels in a manner that will ensure that the marine environment will benefit from their use as an artificial reef.” Draft BMP guidance document, pg 9.

Finally, the guidance does provide an overview of principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef. Further, other than siting considerations that would affect how a vessel is prepared for use as an artificial reef, this document does not provide information detailing the legal requirements applicable to transfer, siting, or sinking of vessels as artificial reefs in vessel-to-reef projects, except for the overview offered in Appendix B. On a case-by-case basis, additional federal statutes also may apply, though the federal statutes identified in Appendix B would be most relevant for the preparation of a vessel for use as an artificial reef.

Accordingly, EPA does not provide further response regarding comments expressing opposition to using obsolete and decommissioned vessels as artificial reefs, recommending the use of alternatives to artificial reefing, seeking inclusion of regulatory guidance, or requesting that the document address specific regulatory regimes. In keeping with Section 3516 of the National Defense Authorization Act for Fiscal Year 2004, this guidance document addresses only recommended clean-up practices for vessels that are intended to be placed as artificial reefs. It neither endorses such placement, nor does it address the potential availability or environmental effects associated with alternatives to placement of vessels as artificial reefs. EPA addresses such comments only to the extent necessary to ensure a clear understanding of the guidance document’s purpose and scope, and to ensure accurate portrayal of the various statutory, regulatory, and treaty provisions raised by the comments.

Comment # O-I-1:

The practice of disposing end-of-life vessels through ocean dumping for “artificial reefs” concerns BAN. First, the practice can be seen as a toxic trade or transboundary movement of pollution issue – already we have heard of plans to export some US toxic ships to Caribbean countries, or to utilize areas of the high seas (the global commons) to allow dumping of toxic materials and valuable steel scrap.

Response to Comment # O-I-1:

In the domestic ship reefing context, as presented in the BMP guidance document, there is no transboundary movement of hazardous waste – that is, the ships will not be exported from the U.S. The ship reefing activities occur completely outside of a transboundary transaction. Furthermore, the authority of the Secretary of the Navy under 10 U.S.C. 7306(a) to transfer vessels stricken from the Naval Register, i.e., the preparation of which would be guided by the BMPs in this document, is restricted to “any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof,” none of which would seem to have an incentive to move a transferred vessel across any international boundary. For further discussion, see also *Response to Comment #s O-I-50 and O-I-58* below.

It is not our intent to “allow dumping of toxic materials or valuable steel scrap on the high seas.” Placement of appropriately prepared/cleaned vessels for the creation of artificial reefs is not ocean dumping within the meaning of either relevant international treaties or U.S. domestic law. The Marine Protection, Research, and Sanctuaries Act (MPRSA), known as the Ocean Dumping Act, regulates the transportation of material from the United States for the purpose of disposing it into ocean waters. “Dumping,” however, does not include the placement of structures or devices in the ocean for a purpose other than disposal (e.g., for fisheries enhancement, aids to navigation, or scientific research) provided that such placement is otherwise regulated by federal or State law or occurs pursuant to an authorized federal or State program.

There are a variety of laws that protect our ocean and coastal waters, many of them tailored to address specific types of activities or materials. The creation of artificial reefs is regulated under a number of separate statutes, including the National Fishing Enhancement Act, Section 404 of the Clean Water Act (when within three miles from shore), and Section 10 of the Rivers and Harbors Act. Activities permitted under those statutes must comply with the requirements of the Coastal Zone Management Act, when applicable. If there are PCBs at concentrations of over 50 parts per million on a vessel to be used as an artificial reef, the sinking of the vessel is regulated under the Toxic Substances Control Act. In addition, Navy vessels to be used as artificial reefs also must be prepared in accordance with the BMP guidance document pursuant to National Defense Authorization Acts for Fiscal Years 2003 and 2004 (see Appendix A of the guidance document).

This guidance identifies materials or categories of materials of concern that may be present aboard vessels, indicates where these materials may be found, and describes their potential adverse impacts if released into the marine environment. For each material of concern identified, this document provides a narrative clean-up performance goal and information

on methods for addressing those goals in preparation of the vessel prior to sinking. The preparation of vessels in this manner will help ensure that their use as artificial reefs is environmentally sound.

The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in this document, if implemented and accompanied by strategic site selection, will maximize the opportunity for a vessel to benefit the environment as an artificial reef.

For further discussion, see also *Response to Comment #s O-I-63, O-I-64, and O-I-67* below.

Comment # O-I-2:

Second, such practices not only directly threaten environments, fish stocks and communities dependent on such resources in developing countries, but similar to the direct phenomenon of export, such dumping practices ultimately absolves the owners of the vessels (those that benefited from their existence) from taking full responsibility over their vessel's toxic constituents now and in future through non-toxic ship design.

Response to Comment # O-I-2:

As mentioned above in *Response to Comment # O-I-1*, the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The use of the BMP guidance document will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs.

The purpose of this guidance document is to provide recommendations for vessel preparation/cleaning for domestic reefing (i.e., vessels sunk within the boundary of the outer continental shelf of the United States). The guidance document identifies environmentally sound best management practices for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. For further discussion, see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67* as well as *General Response # O-I-0 to Basel Action Network Comments* regarding the BMP guidance document's purpose and scope.

Comment # O-I-3:

We are likewise concerned about the practice of dumping valuable steel resources at sea rather than accomplishing far more appropriate resource recovery in an environmentally sound and sustainable manner.

Response to Comment # O-I-3:

The guidance document provides recommended clean-up performance goals specific to the vessel management option of creating an artificial reef. In keeping with Section 3516 of the National Defense Authorization Act for Fiscal Year 2004, this guidance neither endorses the placement of vessels as artificial reefs nor does it address the potential availability or environmental effects associated with alternatives to placement of vessels as artificial reefs. Placement of appropriately prepared/cleaned vessels for the creation of artificial reefs is not ocean dumping within the meaning of either relevant international treaties or U.S. domestic law. For further discussion, see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67* as well as *General Response # O-I-0 to Basel Action Network Comments* regarding the BMP guidance document's purpose and scope.

Comment # O-I-4:

The globally recognized waste management hierarchy strongly suggests that dumping waste at sea is not the environmentally preferable option. The United States should be fostering a robust and state-of-the-art ship recycling infrastructure in this country, not looking for hiding places or cheap disposal options that undermine the worthwhile development of the recycling industry.

Response to Comment # O-I-4:

Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The draft BMP guidance discuss the vessel management option of artificial reefing.

It is beyond the scope of the BMP guidance to provide a decision process to determine the management option for obsolete and decommissioned military and commercial vessels. The specific application of this guidance document is for implementing the vessel management option of creating an artificial reef.

The development of guidance on preparation of vessels for artificial reefs as directed by Congress neither undermines nor promotes the ship recycling industry in the U.S., much less undermine or promote "cheap disposal options" as the commenter states. Placement of appropriately prepared/cleaned vessels for the creation of artificial reefs is not ocean dumping within the meaning of either relevant international treaties or U.S. domestic law. For further discussion, see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67* as well as *General Response # O-I-0 to Basel Action Network Comments* regarding the BMP guidance document's purpose and scope.

Comment # O-I-5:

Finally, we believe that dumping end-of-life vessels at sea sends a dangerous cultural message that the natural world and in particular our marine environment can be used as humanity's trash bin. The notion that nature can be "improved upon" by artificial constructs, is a dangerous one as it presupposes that humans understand ecology fully and it further presupposes that nature should not be preserved to the extent possible as it is regardless of whether human beings value it in its natural state or not.

Response to Comment # O-I-5:

As stated in the draft BMP guidance document, the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The draft BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in this document, if implemented and accompanied by strategic site selection, will maximize the opportunity for a vessel to benefit the environment as an artificial reef.

Placement of appropriately prepared/cleaned vessels for the creation of artificial reefs is not ocean dumping within the meaning of either relevant international treaties or U.S. domestic law (see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67* below).

2

Comment # O-I-6:

In sum, BAN believes that the practice of reefing vessels:

- poses a serious environmental threat, particularly from persistent pollutants (e.g. heavy metals and PCB constituents (in solid or liquid matrices) remaining in the reefed vessels; The threat from PCBs is known to be worse for sensitive populations including African and native Americans as well as for children.

Response to Comment # O-I-6:

In response to the commenter's opposition to the practice of artificial reefing of vessels, see *General Response # O-I-0 to Basel Action Network Comments* above. With regard to concerns about persistent pollutants and PCBs, see *Response to Comment #s O-I-26 through O-I-53*. With regard to environmental justice issues, see *Response to Comment # O-I-42*.

Comment # O-I-7:

- provides no responsibility in accordance with the polluter pays principle, and therefore provides no future incentives to prevent the use of toxic constituents in shipbuilding;

Response to Comment # O-I-7:

Regarding the “polluter pays principle,” see *Response to Comment # O-I-66* below. For further discussion regarding the draft BMP guidance document’s purpose and scope, see *General Response # O-I-0 to Basel Action Network Comments*.

Comment # O-I-8:

- prevents vital industrial materials, such as scrap steel, from being recycled and reused;

Response to Comment # O-I-8:

Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The BMP guidance document discusses the vessel management option of artificial reefing. In the context of cleaning/preparing a vessel prior to reefing, the BMP guidance document does address salvage of useful materials on the vessels (draft BMPs, pg 8). More specifically, the BMP guidance document states that “some portions of a candidate vessel may be economically salvageable. Any such salvage operations should occur in a manner that will minimize debris and contamination with oils or other products that have to be cleaned up at a later date. This activity should allow for improved access for subsequent clean-up efforts, and the salvage proceeds may help offset some costs for vessel preparation.” Further, the placement of appropriately prepared/cleaned vessels with the intent to create an artificial reef is the “re-use” or “recycling” of the vessel itself.

It is beyond the scope of the BMP guidance to provide a decision process to determine the management option for obsolete and decommissioned military and commercial vessels. The specific application of this guidance document is for implementing the vessel management option of creating an artificial reef. For further discussion regarding the draft BMP guidance document’s purpose and scope, see *General Response # O-I-0 to Basel Action Network Comments*.

Comment # O-I-9:

- prevents the jobs and industrial development for a robust domestic infrastructure for recycling our own wastes in accordance with the self-sufficiency principle of the Basel Convention;

Response to Comment # O-I-9:

See *Response to Comment # O-I-8* above. For further discussion regarding the Basel Convention, see *Response to Comment # O-I-55* through *O-I-58* below.

Comment # O-I-10:

- Sends a dangerous cultural message that the seas can be used as dumping grounds and that nature can be improved upon by human intervention;

Response to Comment # O-I-10:

See *Response to Comment #s O-I-1* and *O-I-5*.

BAN is also concerned that the two objectives of Section 3516 of the National Defense Authorization Act (NDRA), which mandated the development of these Reefing Guidance, namely: “recommend practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs”, and “promote consistent use of such practices nationwide” cannot be fully realized unless the Reefing Guidance addresses the following critical issues:

Comment # O-I-11:

1. Reefing or disposal at sea is at or near the bottom of the globally acknowledged waste management hierarchy and is not the environmentally preferable option.

Response to Comment # O-I-11:

Because this document is intended to provide guidance to those who have chosen to pursue the artificial reef management option, it would not be appropriate to reference the waste management hierarchy in the final guidance document. The overall purpose of the BMP guidance document, as set out in Section 3516 of P.L. 108-136, is to provide “guidance recommending environmental best management practices to be used in the **preparation of vessels for use as artificial reefs**” (emphasis added). The comment appears to be directed at the underlying legislation, not the BMP guidance itself. For further discussion regarding the BMP guidance document’s purpose and scope, see *General Response # O-I-0 to Basel Action Network Comments*.

EPA disagrees that the specific practice of reefing of vessels for habitat creation has been globally acknowledged as being at or near the bottom of any waste management hierarchy. In the context of EPA’s solid waste management hierarchy, artificial reefing of obsolete vessels is a form of reuse, and hence superior to recycling. Further, the draft BMP guidance document does address salvage of useful materials on the vessels (draft BMPs, pg 8), and placement of vessels as artificial reefs as a means to re-use and recycle the vessel for habitat creation.

Comment # O-I-12:

2. PCBs, both in liquid or solid matrices, are very significant and unnecessary threat to the marine environment, fish stocks and human health. It is known that the highest levels of PCBs have been found in the tissues of African-Americans, which raise serious environmental justice concerns.

Response to Comment # O-I-12:

With regard to PCBs, see *Response to Comment #s O-I-26 through O-I-53*. With regard to environmental justice issues, see *Response to Comment # O-I-42*.

Comment # O-I-13:

3. Legal issues posed by the Basel Convention, Stockholm Convention and London Convention and its 1996 Protocol are at odds with these Guidelines but appear to have been ignored by the government.

Response to Comment # O-I-13:

With regard to the applicability and content of the referenced treaties, see *Response to Comment #s O-I-54 through O-I-70* below. For further discussion regarding the BMP guidance document's purpose and scope, see *General Response # O-I-0 to Basel Action Network Comments*.

BAN's specific comments on these three critical issue areas follow:

II. Waste Management Hierarchy – “Reefing” as Dumping

Comment # O-I-14:

The Reefing Guidance must make it explicit that the disposal of end-of-life vessels as artificial reefs is at or near the least preferred waste management option in the globally recognized waste management hierarchy.

Under the United Nations Environment Program, government-designated experts have outlined the elements of an international strategy and an action program for dealing with wastes, including technical guidelines for environmentally sound management of hazardous wastes:

1. Prevent the generation of wastes;

3

2. Reduce to a minimum the wastes generated by economic activities;

3. Recover, reuse and recycle the greatest possible quantity of those wastes which are still generated; and
4. Dispose of, in an environmentally sound manner, any remaining waste.¹

This globally accepted waste management hierarchy was again enunciated in the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal (Basel Convention) Guidance Document on Transboundary Movements of Hazardous Wastes Destined or Recovery Operations. In this document, it is manifestly stated that:

“Special consideration should therefore be given by governments to taking appropriate steps to ensure that the generation of hazardous wastes within their territories is reduced to a minimum. An important component of this would be promoting the development and use of cleaner production methods applicable to activities generating hazardous wastes and the *recovery of hazardous wastes unavoidably generated by such activities.*”

The United States Environmental Protection Agency (EPA) also observes the waste management hierarchy.²

Response to Comment # O-I-14:

See *Response to Comment # O-I-11* above. To the extent this comment is focused on potentially hazardous constituents in vessels, the BMP guidance document provides recommended clean-up goals that specifically address removal of such constituents. The constituents identified in the BMP guidance include, but are not limited to: fuels and oil, asbestos, polychlorinated biphenyls (PCBs), paints, debris (e.g., vessel debris, floatables, introduced material), and other materials of environmental concern (e.g., mercury, refrigerants).

Comment # O-I-15:

While some might claim that using a ship as an artificial reef is a form of “re-use”, this cannot really be said to be true as the ship in question never served the purpose of a reef in its past. Claiming such is tantamount to saying that if the very same obsolete vessels were dumped onto US national deserts or wetlands, bird roosting and nesting places are in turn created and that is a form of “re-use”. This comparison is made to illustrate that since the proposal to dump these wastes is in the relatively out-of-sight, out-of-mind *marine* environment, this form of waste application can be called by some “beneficial to nature” and seen as acceptable. However, were the same waste proposed to be dumped in a land wilderness area, the public would be outraged particularly when they were known to contain hazardous wastes and such dumping would likely be illegal.

Response to Comment # O-I-15:

As posed by the commenter, if use of obsolete vessels for artificial reef creation were viewed as disposal, under the waste management hierarchy, this would discourage use of obsolete vessels in favor of virgin materials or purpose-built structures. This in turn would have environmental consequences (e.g., energy use, natural resource extraction) not associated with environmentally-sound re-use of obsolete vessels. The placement of

appropriately prepared/cleaned vessels with the intent to create an artificial reef is the “re-use” or “recycling” of the vessel itself. Further, placement of appropriately prepared/cleaned vessels for the creation of artificial reefs is not ocean dumping within the meaning of either relevant international treaties or U.S. domestic law (see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67* below). Placement of vessels as artificial reefs is subject to regulation under domestic law (see *Response to Comment # O-I-67*), including careful consideration of the environmental impacts resulting from such placement. Thus, the suggestion that the analogy is between an “out of sight out of mind” regime for marine waters, as opposed to careful regulation on land, is inaccurate.

Comment # O-I-16:

In other words, we are creating a double standard whereby the marine environment is somehow “improved” by dumping whereas the tertiary environment would be marred and contaminated. The fact that such dumping in the marine environment is even being considered has everything to do with economic exploitation of this double standard (less concern over marine wilderness than tertiary wilderness) rather than any proper focus on attaining the basic national environmental goals stressed in the National Environmental Policy Act.³

These goals include:

- Assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings.

¹ Report of Ad hoc meeting of Government designated experts (Nairobi, 9-11 December 1991) UNEP/CHW/WG.2/1/3.

² See at <http://www.epa.gov/epaoswer/non-hw/muncpl/facts.htm>.

³ The National Environmental Policy Act of 1969, 42 USC § 4331 et. seq. [hereinafter NEPA].

- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.⁴

Response to Comment # O-I-16:

See *Response to Comment #s O-I-5 and O-I-15*, respectively. The determination as to the issuance of permits for placement of artificial reefs under the authorities identified in *Response to Comment # O-I-67* is subject to environmental documentation under the National Environmental Protection Act. See, 33 CFR 230.2.

Comment # O-I-17:

The proper term is not “reuse” but one might consider the term “alternative use” – e.g. to create entertainment for scuba divers, fish aggregation, or erosion control. But such “alternative use” does not fit well within the waste management hierarchy. Alternative uses for wastes, even toxic wastes can readily be devised for any waste but that hardly means that they are environmentally sound or desirable.

Response to Comment # O-I-17:

For discussion on the potential for artificial reefs to enhance the marine environment and on the concept of reefing as “re-use” of a vessel, see *Response to Comment # O-I-15*. In addition, the alternative use that is really at issue is the placement of artificial reefs for habitat creation in accordance with all applicable federal, State, and local laws, not, as the comment seems to suggest, the random or haphazard devising of alternative uses for waste.

Comment # O-I-18

We can equally entertain the notion that toxic waste can be used to fill road beds, construction materials, create dams, fill up holes, etc., but these uses are a far cry from what is meant by “recovery, reuse, recycle”. Clearly, ocean deposit of ships for so-called artificial reefs is more accurately described in the 4th step of the waste management hierarchy as a form of disposal. Indeed the EPA admits this by proposing to apply *disposal* criteria found in 40 CFR 761.62(c) for the PCB content in the vessels.

Response to Comment # O-I-18:

With regard to the discussion of vessel-to-reef projects as the “re-use” of a vessel, see *Response to Comment # O-I-17*. For further discussion pertaining to placement of vessels as artificial reefs and ocean disposal, see *Response to Comment #s O-I-1, O-I-63, O-I-64, and O-I-67*. For discussion pertaining to the waste management hierarchy, see *Response to Comment #s O-I-8, O-I-11, and O-I-15*.

We also note that for purposes of domestic law under the Toxic Substances Control Act (TSCA), the reefing of a ship with regulated PCBs remaining onboard is considered to be disposal of those PCBs under 40 CFR 761. For further discussion regarding PCBs and TSCA, see *Response to Comment #s O-I-26 through O-I-53*. Although the vessel itself is being “reused” or “recycled” as an artificial reef, the materials with regulated PCBs have reached the end of their useful life and as such, are being disposed.

Comment # O-I-19:

Indeed *disposal* is precisely the category in which it is referred to in the Basel Conventions in its Annex IV of Disposal operations. There the lists are separated into two categories – the D list for final disposal and the R list (“resource recovery, recycling, reclamation, direct re-use or alternative uses”). The Basel listing is D7 (Release into seas/oceans including sea-bed insertion) – a form of final disposal.

Response to Comment # O-I-19:

The comment appears to be merely an assertion of the commenter's own opinion rather than a comment on the draft BMP guidance. For this reason, no response is necessary. Additional responses related to comments regarding the Basel Convention are provided in *Response to Comments # O-I-55 and O-I-56*.

Comment # O-I-20:

Regardless of whether specific interest groups such as sport fishers or divers advocate "artificial reefs" to make their hobbies more interesting, this form of waste management can never be seen as environmentally preferable to Step 3 of the hierarchy of waste management – resource recovery.

Thus, using end-of-life vessels, as artificial reefs should only be considered when it is impossible to recover the scrap resources from a vessel e.g. the steel.

The benefits of advocating and promoting recycling of scrap steel from end-of-life vessels are obvious. Minimization of water and air pollution, and mining wastes if scrap steel from vessels is recycled instead of mining virgin ore. Annually, steel recycling "saves the energy equivalent to electrically power about one-fifth of the households in the United States (or about 18 million homes) for one year."⁶

Response to Comment # O-I-20:

Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The BMP guidance document discusses vessel clean-up and preparation for one of those management options, specifically artificial reefing. For further discussion regarding recycling/scrapping, see *Response to Comment # O-I-15*.

Comment # O-I-21:

For the proper implementation of Reefing Guidance, users must be apprised of the true status of disposal at sea in the waste management hierarchy. Waste management professionals and policy makers must be clear that under the widely accepted waste management hierarchy, disposal is the least preferred among the various waste management options, and not as inaccurately characterized in the Reefing Guidance as just another option.

⁴ 42 USC § 4331, b.

⁵ The Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal *see* at <http://www.basel.int>.

⁶ *See* at <http://www.recycle-steel.org/fact/main.html>.

This reference to the waste management hierarchy must be placed into the Reefing Guidance in order to have a consistent nationwide application as mandated under Section 3516 of the NDRA.

Response to Comment # O-I-21:

See Response to Comment # O-I-11.

Comment # O-I-22:

This is vital in the context of what is needed to manage the greater numbers of obsolete vessels expected to arise. We can expect very large amounts of ships that will need to be disposed of in the future, and not just those with US flags. It is a global industry in need of global solutions, for which the United States should play a major role.

Response to Comment # O-I-22:

This comment addresses future needs for disposal of a growing number of obsolete ships over the years and thus is beyond the scope of the guidance document, which addresses clean-up goals for vessels that will be used to create artificial reefs (see also *General Response # O-I-0 to Basel Action Network Comments* above). The U.S. is an active participant, however, in International Maritime Organization (IMO) activities addressing ship recycling issues, including participation on a joint IMO/ILO/Basel Convention workgroup that was held in February 2005 (see Report of 53d Session of Marine Environment Protection Committee, MEPC 53/24 at pp 17-28).

Comment # O-I-23:

The principle of environmental justice does not allow us to export toxic waste ships to low-wage countries such as India, China, or Bangladesh. The Basel Convention, for which the US is now readying implementation legislation, obligates every country to become self-sufficient in environmentally sound waste management.⁷ We should not be allowed to shift our global hiding places for waste from developing countries to the global commons (our seas).

Response to Comment # O-I-23:

The guidance document addresses clean-up goals for vessels that will be used to create artificial reefs and comments related to ship exports are thus beyond the scope of the guidance document (see also *General Response # O-I-0 to Basel Action Network Comments* above).

With regard to the status of the Basel Convention in the U.S., see *Response to Comment # O-I-58* below. With regard to use of the high seas as a “global hiding-place” for waste, see *Response to Comment #s O-I-1 and O-I-15*.

Comment # O-I-24:

The development of a national infrastructure and capacity of the appropriate scale to deal with all such ships via recycling and resource recovery in an environmentally sound manner are what proper self-sufficiency and the waste management hierarchy entail, particularly for the wealthiest country on earth.

Response to Comment # O-I-24:

This comment is beyond the scope of the document (see *General Response # O-I-0 to Basel Action Network Comments* above). With regard to waste management hierarchy issues, see also *Response to Comment # O-I-15*.

Comment # O-I-25:

By diverting even a few ships to ocean disposal, at this critical period of industrial development of the American ship recycling industry, we limit the profitability and sustainability of such recyclers, forestalling (perhaps permanently) their development. As such, any preference for ocean dumping, particularly at this point in history, is seen as even more misguided.

Response to Comment # O-I-25:

See *Response to Comment #s O-I-8 and O-I-9*.

III. Removal of All PCBs Is Essential

Double Standards

Comment # O-I-26:

The Reefing Guidance, inappropriately and inexplicably excuses from removal PCB impregnated solid materials that are less than or equal to a concentration of 50ppm. Perhaps even more stunning is the fact that even levels higher than 50ppm of PCBs in a solid matrix do not have to be removed if a disposal permit is granted under 40 CFR 761.62(c). The precise language in the proposed rulemaking is as follows:

“Remove all solid materials containing PCBs > or = 50ppm, which includes but is not limited to felt gasket and faying material, cables, paints, rubber gaskets as well as battle lanterns and fluorescent light ballasts. EPA recognizes that non-liquid PCBs may be difficult to locate and remove and that removal may jeopardize the integrity of the ship. If non-liquid PCBs > or = to 50ppm are to remain on the vessel, then 40 CFR Part 761 requires you to obtain a PCB disposal permit under 40 CFR 761.62(c).”⁸

⁷ Article 4.2.b, Basel Convention.

PCB levels in the environment, which in the past were seen to be declining have been steadily increasing in the last 10 years. This is very alarming and should command more precaution on the part of the EPA than is witnessed in the Reefing Guidance.

Response to Comment # O-I-26:

EPA wishes to clarify that this is a guidance document and not a formal rulemaking. As such, this guidance does not substitute for any statute or regulation, nor is it a regulation itself.

Under 40 CFR 761, manufactured products containing less than 50 ppm of solid PCBs are not regulated for disposal; therefore, EPA cannot require their removal and disposal. Manufactured products containing ≥ 50 ppm of solid PCBs that are to be disposed are considered PCB bulk product waste. Disposal of PCB bulk product waste other than as specified at 40 CFR 761.62(a) or (b) is allowed only if EPA finds that the disposal will not result in an unreasonable risk to human health or the environment (40 CFR 761.62(c)). As the disposal of PCB bulk product waste via the sinking of a vessel is not a method listed at 40 CFR 761.62(a) or (b), EPA would need to determine that this method does not pose an unreasonable risk before granting an approval.

Comment # O-I-27:

First, it is essential to bear in mind that the cutoff point of 50ppm was developed years ago, not with the marine environment in mind, but with respect to the levels for which PCB wastes that would be allowed to possibly avoid being placed in a controlled landfill.

Response to Comment # O-I-27:

Given that the PCBs in PCB bulk product waste are tightly bound within the product matrix, EPA believes that 50 ppm is an appropriate lower limit for PCB bulk product waste (see 63 FR 35411). The PCBs are expected to leach out of the matrix more slowly than PCBs from other materials. The relative leachability should hold in an aqueous environment as well as a terrestrial environment.

Comment # O-I-28:

It is shocking to consider what the legal options would be under US statutes if the same PCB contaminated materials that are known to exist on obsolete vessels were to be deposited on land. The Toxics Substance Control Act provides that for solid PCBs above 50ppm, there are generally four options:

- Placement in a solid waste landfill possessing required leach control systems;
- Hazardous waste incinerator;
- TSCA or RCRA hazardous waste landfill; and
- Utilize the risk-based permit approach under 40 CFR 761.62(c).⁹

As we can see, the first three options require human intervention to control leachate or emissions that will not exist in the marine environment. They also require monitoring, post-closure monitoring, and post-closure corrective action. Regarding the 4th option, which is being proposed for ships in the Reefing Guidance it is vital to note that this option has never ever before been used to justify marine disposal of PCBs. A very dangerous new precedent is thus being proposed here.

Response to Comment # O-I-28:

The disposal requirements for PCB waste are described at 40 CFR Part 761. These regulations provide the option of managing PCB wastes in a manner other than that specifically prescribed in the regulations, if EPA determines that this alternate method will not result in an unreasonable risk to human health or the environment. To date, EPA has issued one risk-based disposal approval to dispose of PCB bulk product waste on a vessel to be sunk as an artificial reef. The application and its supporting documents have undergone rigorous internal and external reviews by EPA and by EPA's Science Advisory Board. EPA determined that the disposal of the PCB bulk product waste on that ship would not pose an unreasonable risk to human health and the environment.

EPA intends to make both pre- and post-sinking monitoring a condition of any risk-based disposal approval issued for a vessel-to-reef project.

Comment # O-I-29:

Further, the risk-based approach in this instance is inappropriate for the following reasons:

1. The risks, however negligible one might consider them, are completely unnecessary. As mentioned before, there are other far more appropriate ways to dispose of PCB waste than by dumping it at sea.
2. PCBs can have estrogenic effects and impact biota, mimicking or interfering with hormonal action at extremely low levels (e.g. in the parts per trillion range) thus, it can be said that in fact there are no known "safe levels" for PCBs.

Response to Comment # O-I-29:

Although the draft BMP guidance document mentions various options for managing obsolete and decommissioned military and commercial vessels (e.g., reuse of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea), the purpose of the BMP guidance document is to present information on the preparation of vessels when employing the vessel management option of artificial reefing. It is beyond the scope of the BMP guidance document to provide a decision process to determine the management option for obsolete and decommissioned military and commercial vessels.

EPA is aware of the health impacts and risks from PCB exposure. However, an in-depth discussion of the health and ecological effects of PCBs is outside the scope of the BMP guidance document. EPA will make a ship-by-ship, site-specific determination under 40 CFR 761.61(c) or 40 CFR 761.62(c) on whether alternate disposal of PCB bulk product waste or PCB remediation waste via reefing of the ship containing these PCB wastes presents an unreasonable risk to human health and the environment. This will be the basis of EPA's determination for each ship as to whether the alternate disposal method via ship reefing should be approved. EPA will not make a generic determination as part of the BMP guidance document.

Comment # O-I-30:

The EPA's recognition that "non-liquid PCBs may be difficult to locate and remove and the removal may jeopardize the integrity of the ship," is without basis. The integrity of a ship can hardly be seen as a vital consideration when the ships are going to be dumped into the sea. Towing such ships with flotation devices no matter what the integrity is clearly feasible. The higher goal of preventing the dangerous PCBs in the vessels from migrating into the marine environment should trump these other issues.

Response to Comment # O-I-30:

EPA does believe that the watertight integrity of the vessel must be taken into consideration during vessel preparation to prevent accidental or premature sinking that could result in injury or death to employees involved with towing and sinking activities. However, it is outside of EPA's expertise and the scope of the BMP guidance document to discuss different towing practices and options. Vessel owners or vessel-to-reef project sponsors have the responsibility of developing a towing and sinking plan prior to applying for a vessel and executing the scuttling of a vessel.

⁹40 CFR 761.62.

PCBs are PCBs – No Distinctions

Comment # O-I-31:

In allowing for permits to dump PCBs in the marine environment above or below 50ppm (a landbased derived figure), the EPA has also leaned heavily on a distinction between so-called "solid" and "liquid" PCBs that is not supportable. PCBs are not commonly classified as "solid" or "liquid" in scientific literature because PCBs only exist at normal temperatures as viscous, oily

liquids. The so-called “solid” or “non-liquid” PCB’s present in vessels are more accurately liquid PCB’s impregnated into porous materials like gaskets, filters, and cables, or mixed with paints.

Response to Comment # O-I-31:

EPA agrees that solid materials containing PCBs can be better represented by other terminology. EPA will revise the draft BMP guidance document to use the regulatory terms “PCB bulk product waste” and “PCB remediation waste” rather than “solid PCBs.” EPA believes that it is appropriate to continue to use the term “liquid PCBs,” which is a regulatory term defined at 40 CFR 761.3.

Comment # O-I-32:

PCB’s are toxic in any form, regardless of whether the PCB’s are in free liquid form, impregnated into porous materials or in thick resins and they have a great propensity to leach out of whatever matrix in which they are placed. We have attached herein the declaration of Dr. Peter deFur, a nationally recognized expert on ecological risk assessment pertaining to endocrine disrupting chemicals and the generation, release, and discharge of toxic chemicals, that he made regarding risks posed by PCBs on the Chesapeake Bay System that discusses this matter in greater detail.

Response to Comment # O-I-32:

The referenced declaration of Dr. Peter deFur was received. This document has been identified as Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0027.

Comment # O-I-33:

If anything, the matrix in which PCBs are placed (solid or liquid) only modulates the rate at which PCBs might be released into the environment. As we are not talking about temporary deposit into the marine environment of the vessels, the question of time becomes moot – sooner or later the PCBs will be released into the marine environment. We can see no evidence herein that the EPA expects the PCBs to degrade in the marine environment into harmless substances. Thus, the only bearing that a slower rate of release can have is upon diffusion and dilution.

Response to Comment # O-I-33:

EPA agrees that the PCBs in the PCB bulk product waste will leach out eventually. EPA believes that the rate from PCB bulk product waste will be relatively slow. While there will be some degradation of PCBs, it will be very slow. However, EPA believes that the level of exposure to PCBs leached from these materials in the aquatic environment will be relatively low per unit of time and will be dispersed by the current. The extent to whether an unreasonable risk will or will not result is dependent upon the specifics of any disposal, e.g., quantity of PCBs, type of material containing the PCBs, fauna and flora in the vicinity of the disposal site, and fishing and consumption patterns.

Comment # O-I-34:

With respect to persistent organic pollutants, however, we have learned in countless studies in the last two decades that nature has a way of taking diluted substances and re-concentrating them (e.g. via bio-magnification) into the food chain. Certainly the Stockholm Convention discussed at length later, does not consider dilution as a solution to pollution. Indeed the impetus in large part to special controls and international action to address persistent organic pollutants through prohibitions rather than controls was the very fact that assimilative capacity assumptions used in the past for other pollutants, do not apply to persistent organic pollutants.

Response to Comment # O-I-34:

The comment appears to be merely an assertion of the commenter's own opinion rather than a comment on the draft BMP guidance. For this reason, no response is necessary.

Comment # O-I-35:

Once PCBs are in the marine environment they are very persistent and bioaccumulative. PCBs bio-concentrate and bio-magnify in the marine environment so that larger and more fatty fish consumed by humans can result in higher doses of PCBs than might be expected from small diffuse releases.

Response to Comment # O-I-35:

EPA agrees that PCBs are persistent and bioaccumulate in aquatic organisms and that humans can be exposed by consumption of aquatic organisms. However, an in-depth discussion of the health and ecological effects of PCBs is outside the scope of the BMP guidance document. In determining whether disposal of PCB bulk product waste or PCB remediation waste left on a ship that is to be reefed can be approved as the disposal method for these PCB wastes, EPA must consider whether this disposal represents an unreasonable risk to human health and the environment. The ability of PCBs to persist and bioaccumulate, as well as the potential for exposure to PCBs resulting from this method of disposal, are factors in this determination, but are not the only factors considered. EPA considers the estimated quantitative exposure and the risks resulting from the exposure.

Comment # O-I-36:

Contrary to what is stated in the Reefing Guidance, Appendix C, there is no known safe level for PCBs as they have the potential to impact flora or fauna at very low levels (e.g. endocrine disruption). Thus, human health, not to mention the health of wildlife, is very much at risk with respect to persistent organic pollutants, such as PCBs, once deposited in the marine environment, particularly from the pathway of contaminated fish stocks.

Response to Comment # O-I-36:

EPA is aware of the health impacts and risks from PCB exposure. An in-depth discussion of the health and ecological effects of PCBs is outside the scope of the BMP guidance document. In making a determination of whether to approve an alternate disposal method

for PCB bulk product waste or PCB remediation waste, EPA must determine if this alternate disposal method would result in an unreasonable risk. In making that determination, EPA considers, among other things, the persistence, bioaccumulation, toxicity and exposures, and the magnitude of the potential risk. Once the level of risk is characterized, EPA makes a policy judgment as to whether it is outweighed by the benefits of the disposal action. The mere existence of some risk is not dispositive under TSCA.

Impact on Sensitive Populations and Environmental Justice

Comment # O-I-37:

The Reefing Guidance properly notes that after sinking, humans are exposed principally through the food chain by eating animals, notably fish that have accumulated PCBs from the sediments. However, the Reefing Guidance must highlight and caution that the concentrations of PCBs are increased through food chain accumulation, and bio-magnification poses a serious threat to human populations consuming PCB contaminated fish or marine life.

Response to Comment # O-I-37:

The draft BMP guidance document does highlight and caution the potential human and environmental impacts of PCBs in the marine environment. The draft BMP guidance document states that PCBs are persistent and bioaccumulative and that PCBs bioaccumulate in fatty or lipid rich tissues. The draft BMP guidance document further states that PCBs have a limited solubility in aqueous solutions and it is suspected that PCBs can leach into a marine or aqueous environment (sediment and water column) where they can be taken up by organisms in the food web. In addition, PCBs bioaccumulate in fish and other animals; PCBs also bind to sediments. Per the draft BMP guidance document, “people who ingest fish may be exposed to PCBs that have been released into the environment.” In response to Comment # O-I-37, the final BMP guidance document provides additional information in the PCB chapter under the section “What are the potential environmental impacts of PCBs” that reads as follows:

“PCBs have been demonstrated to cause a variety of adverse health effects. PCBs have been shown to cause cancer in animals and have also been shown to cause a number of serious non-cancer health effects in animals, including effects on the immune system, reproductive system, nervous system, endocrine system and other health effects. Studies in humans provide supportive evidence for potential carcinogenic and non-carcinogenic effects of PCBs. The different health effects of PCBs may be interrelated, as alterations in one system may have significant implications for the other systems of the body. EPA’s peer reviewed cancer reassessment concluded that PCBs are probable human carcinogens. In addition, PCBs are persistent and bioaccumulative. PCBs bioaccumulate in fatty or lipid-rich tissues. PCBs have a limited solubility in aqueous solutions and PCBs can leach

into a marine or aqueous environment (sediment and water column) where they can be taken up by organisms in the food web. PCBs bioaccumulate in fish and other animals; PCBs also bind to sediments. As a result, people who ingest fish may be exposed to PCBs that have been released into the environment and bioaccumulated in the fish they are ingesting.

There is a risk of human exposure during vessel preparation and after sinking the vessel. During vessel preparation, typical routes of human exposure include inhalation, accidental ingestion, or dermal contact. After sinking, exposure routes may be limited to accidental ingestion of or contact with contaminated water and sediments, or ingestion of contaminated fish, shellfish, or crustaceans.”

The BMP guidance is not an appropriate place to present an in depth discussion of PCB exposure and possible health effects. However, EPA maintains a PCB webpage where a more in-depth discussion may be found. That webpage can be accessed at www.epa.gov/pcb.

Comment # O-I-38:

Fish, birds, and marine mammals are especially sensitive to the effects of PCB’s. Even concentrations of less than a part per billion in eggs can impair the growth of these animals, or alter the normal growth of the young.¹⁰

Response to Comment # O-I-38:

With regard to the health effects from PCB exposure, see *Response to Comment # O-I-36*.

Comment # O-I-39:

The effects of PCB’s on human health and the environment are on reproduction, development of the fetus or embryo, growth and development of the brain, the function of immune systems, endocrine disruption, not to mention PCB’s are carcinogenic.

Response to Comment # O-I-39:

EPA considers PCBs probable human carcinogens. PCBs are classified by the International Agency for Research on Cancer (IARC) as Group 2A probable human carcinogens. This category is used when there is limited evidence of carcinogenicity in humans and sufficient evidence of carcinogenicity in experimental animals.

An in-depth discussion of the health and ecological effects of PCBs is outside the scope of the BMP guidance document. In making a determination of whether to approve an alternate disposal method for PCB bulk product waste or PCB remediation waste, EPA must determine if this alternate disposal method would result in an unreasonable risk. In making that determination, EPA considers, among other things, the persistence, bioaccumulation, toxicity and exposures, and the magnitude of the potential risk. Once the

level of risk is characterized, EPA makes a policy judgment as to whether it is outweighed by the benefits of the disposal action. The mere existence of some risk is not dispositive under TSCA.

Comment # O-I-40:

In terms of sensitive populations, children are particularly sensitive to the effects of PCB's¹¹. Recent studies reveal that early exposure to even low levels of PCB's can cause impairment of the brain and of behavior.¹²

Response to Comment # O-I-40:

With regard to the health effects from PCB exposure, see *Response to Comment # O-I-36*.

Comment # O-I-41:

Furthermore, the Center for Disease Control's Second National Report on Human Exposure to Environmental Chemicals found that the highest levels of PCBs were African-Americans. The National Environmental Justice Council documented numerous studies finding high PCB levels among Native American (including Alaskan Native) subsistence anglers in their report "Fish Consumption and Environmental Justice."¹³

Response to Comment # O-I-41:

With regard to the health effects from PCB exposure, see *Response to Comment # O-I-36*.

Comment # O-I-42:

Executive Order No. 12898 on Environmental Justice required this research on human health as a result of environmental impacts on poor and minority communities, and called for guidelines for subsistence consumption of fish and wildlife. The Executive Order also called for public participation and access to such information. Yet in this proposed guidance, there is no evidence EPA considered environmental justice implications of the rule despite the fact that PCBs pose a particular threat to environmental justice communities.

Response to Comment # O-I-42:

This is a guidance document and not a formal rulemaking. As such, this guidance does not substitute for any statute or regulation, nor is it a regulation itself.

EPA does not anticipate environmental justice issues involving PCBs, as the ships will be sunk in areas sufficiently offshore to make daily or subsistence fishing improbable. Only members of the general public with the ability to reach the reefs safely and consistently are expected to visit or "use" the reef (fishing/diving) with any consistency. Also, EPA does

not anticipate these reefs to be commercially fished, as commercial fishermen will not risk the loss of their equipment.

¹⁰ Rice, C.P., P. W. O'Keefe and T.J. Kubiak. 20023. Sources, Pathways and Effects of PCB's Dioxins and Dibenzofurans. Pp 501- 573 In: Hoffman, D.J., B.A. Rattner, G.A. Burton and J. Cairns, Jr. Handbook of Ecotoxicology, 2nd Ed. Lewis Pub. Boca Raton FL.

¹¹ S. Schantz et al., (2003). Effects of PCB exposure on Neuropsychological function in children. Environmental Health Perspectives vol 111: 357-376.

¹² *Id.*

¹³ See at

http://64.233.167.104/search?q=cache:JwhPvGfIJrwJ:www.epa.gov/compliance/resources/publications/ej/fish_consump_report_1102.pdf+Fish+Consumption+and+Environmental+Justice&hl=en

9

Risky Assessments

Comment # O-I-43:

Data from the Navy¹⁴ have revealed that fish and invertebrate tissue levels of PCBs, lead, and cadmium were higher in samples from Navy ship reefs than from reference natural reefs.

Response to Comment # O-I-43:

The studies mentioned in the comment would seem to be the studies conducted on the ex-Vermillion. Because the comment appears to be merely an assertion of fact rather than a comment on the draft BMP guidance, no response is necessary.

Comment # O-I-44:

This shows clearly that the PCBs will leach from ships and enter the food chain. For example, average levels of tissue samples of the fish White Grunt were found to be 16.7 ppb in the tissue in natural reefs as compared to average levels of 1118.9 ppb in White Grunt found around the naval vessel.¹⁵ White Grunt is a species known to stay within a small habitat area during its life span.

Response to Comment # O-I-44:

EPA agrees that the PCBs in the PCB bulk product waste will leach out eventually. EPA believes that the rate from PCB bulk product waste will be relatively slow. While there will be some degradation of PCBs, it will be very slow. However, EPA believes that the level of exposure to PCBs leached from these materials in the aquatic environment will be relatively low per unit of time and will be dispersed by the current. The extent to whether an unreasonable risk will or will not result is dependent upon the specifics of any disposal, e.g., quantity of PCBs, type of material containing the PCBs, fauna and flora in the vicinity of the disposal site, and fishing and consumption patterns.

Comment # O-I-45:

To put this in perspective, it should be noted that many states and local governments regularly issue fish advisories in this range. For example, California's level for triggering a fish consumption warning advisory is 100 ppb.

Response to Comment # O-I-45:

With regard to the health effects from PCB exposure, see *Response to Comment # O-I-36*.

Comment # O-I-46:

Despite these findings, the Navy report makes a claim that the levels are of low risk. However, as we have discussed such risk assessment approaches attempting to establish safe levels are inappropriate.

Response to Comment # O-I-46:

At this time EPA cannot make a generic determination as to whether disposal of PCB bulk product waste or PCB remediation waste via reefing of the ship containing these PCB wastes presents an unreasonable risk to human health and the environment. EPA does believe that it can make a determination based on a case-by-case analysis that takes into account site-specific parameters as well as the persistence, bioaccumulative potential and toxicity of PCBs. Thus the Agency will not apply the Navy report to make a broad determination in this BMP guidance document as to the risk from reefing materials containing PCBs.

Comment # O-I-47:

Even if they were deemed appropriate there is simply no data to support a proper risk assessment. The Navy study cited above is not useful as there is really no knowledge of what kinds of PCBs and how many PCBs were in the ship studied (USS Vermillion). As such it is useless other than to tell us that PCBs do indeed leach from such ships into the marine environment and are taken up by fish.

Response to Comment # O-I-47:

See *Response to Comment # O-I-46*.

Comment # O-I-48:

Any risk assessment therefore would have to rely on prospective assessment, using predictive fate transport modeling and as such would have a high degree of uncertainty. What would really be necessary to provide the proper data would be to conduct reefing and monitor the sites for several decades. When in fact, such resources to do this will not likely be supplied by the Federal

government (current owners of most of the available ships). Such responsibility would be likely passed to the states impacted. Again there is little guarantee that state resources would exist for reliable data gathering.

Response to Comment # O-I-48:

The process of obtaining, preparing/cleaning, sinking and maintaining the vessel as an artificial reef, all while protecting human health and the environment, is likely to be a lengthy process that will also be resource intensive. Each State, Commonwealth, or possession of the United States, or any other municipal corporation or political subdivision thereof should carefully consider its long-term financial and legal resource commitments when planning for the transfer of any vessel a vessel-to-reef project.

Comment # O-I-49:

Even if such data gathering were to be accomplished, however, by the time we found an “unreasonable risk” it would be too late to redress it. The damage would have been done.

Response to Comment # O-I-49:

EPA believes that it can determine whether an alternate method of disposal results in an unreasonable risk to human health or the environment. To date, EPA has received and granted one application for a risk-based disposal approval to dispose of PCB bulk product waste via the sinking of a ship containing those wastes as an artificial reef. The application and its supporting documents have undergone rigorous internal and external reviews by EPA and by EPA’s Science Advisory Board. EPA believes that this review is sufficiently rigorous to support a determination that a method will/or will not result in an unreasonable risk to human health or the environment.

Post Disposal Costs, Maintenance, and Corrective Actions

Comment # O-I-50:

Finally, it is very important to note that in practice the EPA requires financial assurances for closure by storers and disposers of PCB waste to cover closure costs. The reefing rules proposal in fact considers reefing as disposal. As that is the case, EPA must herein outline what financial assurance is going to be required, when closure is triggered and when the responsible party is freed from maintaining such financial assurance.

Response to Comment # O-I-50:

It is not clear what the commenter had in mind with regard to “closure” for an artificial reef. While it is true that land-based PCB disposal facilities are closed at the end of their life, there is no expectation that the PCB inventory will be removed at closure. Disposal of the PCBs as part of an artificial reef is considered permanent just as it is for a PCB waste placed in a chemical waste landfill. The requirements for approval of a TSCA chemical

waste landfill at 40 CFR§ 761.75 do not include any specific provisions for closure or financial assurance.

Comment # O-I-51:

It is imperative in our view that due to all of the reasons above, and in particular, the lack of any real data about fate and transport of PCBs, it is not appropriate or possible to make use of the 40 CFR 761.62(c) permitting process as it was foreseen.

Response to Comment # O-I-51:

EPA believes that it can determine whether an alternate method of disposal results in an unreasonable risk to human health or the environment. To date, EPA has received and granted one application for a risk-based disposal approval to dispose of PCB bulk product waste via the sinking of a ship containing those wastes as an artificial reef. The application and its supporting documents have undergone rigorous internal and external reviews by EPA and by EPA's Science Advisory Board. EPA believes that this review is sufficiently rigorous to support a determination that a method will/or will not result in an unreasonable risk to human health or the environment.

¹⁴ A Screening Level Ecorisk Assessment for Using Former Navy Vessels to Construct Artificial Reefs, Final Report, July 17, 2003.

¹⁵ *Id.*

Comment # O-I-52:

Indeed, based on all that we now know about PCBs, persistent organic pollutants, endocrine disruption, bioaccumulation, etc. it is absolutely inappropriate to intentionally deposit any level of PCBs into the marine environment.

Response to Comment # O-I-52:

EPA has not made the determination that there is a no unreasonable risk to health or the environment from sinking a vessel containing regulated levels of PCBs as an artificial reef.

Comment # O-I-53:

It is important to note that Canada, more appropriately does *not* use a risk-based approach for ship dumping at sea. Their clean-up standard for ocean disposal of vessels calls for "any equipment or components suspected of containing PCBs must either be removed or certified that the equipment or component does not contain PCBs."¹⁶

If ship reefing must be done, which we believe is highly dubious based on the waste management hierarchy, the Canadian approach is the correct approach environmentally and legally (see also below re: Stockholm and London Conventions).

Response to Comment # O-I-53:

EPA cannot adopt Canadian regulatory standards. The BMP guidance document references the U.S. regulatory requirements for PCBs under TSCA. This is a stringent set of requirements that, as applied to reefing, would require removal of liquid PCBs and removal of PCB bulk product waste and PCB remediation waste for proper disposal. However, as the BMP guidance document recognizes, in some vessels it may not be feasible to identify and remove every material that could fall under those requirements. The BMP guidance document refers to the provisions in EPA's TSCA regulations allowing for case-by-case risk-based approval to dispose of PCB bulk waste or PCB remediation waste in the marine environment for purposes of creating an artificial reef. Such permits would be based on EPA's finding that the disposal would not pose an unreasonable risk of injury to human health or the environment. 40 CFR 761.61(c) and 761.62(c). Any PCB disposal approved under TSCA would be based on a risk assessment.

IV. Basel, Stockholm and London Conventions

Comment # O-I-54:

As we shall see, what the EPA and MARAD are proposing in the Reefing Guidance flies in the face of international legal norms and obligations some of which directly bear on the United States.

Response to Comment # O-I-54:

Providing recommended practices for clean-up of vessels being used as artificial reefs does not somehow "fly in the face of international legal norms and obligations." The responses to the specific comments presented below provide further detailed and specific reasons for why this is not the case.

Basel Convention

Comment # O-I-55:

The Basel Convention on the Control of the Transboundary Movement of Hazardous Waste and Their Disposal, adopted in March of 1989 seeks to minimize transboundary movements of hazardous wastes, their generation, and promote environmentally sound management of hazardous and other wastes which are unavoidable. While the United States has failed to ratify the Basel Convention, they have signed it, and thereby indicated intent to ratify it. Indeed it is known that implementation language has been readied this year and is expected to be forwarded to Congress early in 2005.

Response to Comment # O-I-55:

EPA has decided not to make any changes to the guidance in response to BAN's comments regarding the Basel Convention. As BAN itself noted, the United States is currently not a Party to the Basel Convention. In addition, even if the United States were a Party, the Basel Convention concerns the transboundary movement of hazardous wastes, as defined under the Convention. In the ship reefing context, there is no transboundary movement expected – that is, the ships will not be exported from the U.S. As the ship reefing activities occur completely outside of a transboundary transaction it would appear that the Convention would not apply.

Comment # O-I-56:

The Basel Convention as mentioned earlier does not consider ocean disposal to be a form of recycling or reuse. Annex IV, A of the Basel Convention clearly indicates this practice as a form of final disposal. While most of the thrust of the Basel Convention has to do with transboundary movement of hazardous wastes, Basel also exists to promote environmentally sound management of hazardous wastes and has created numerous technical guidance documents on various waste streams. One of these guidance documents deals with PCBs. Following the adoption of the Stockholm Convention this guidance documents were deemed out-of-date and is now currently in the process of being re-drafted to reflect changing disposal technologies, and the legal frame of the Stockholm Convention.

Response to Comment # O-I-56:

See *Response to Comment # O-I-55*. In addition, while guidelines developed under the Convention are sometimes relevant to the environmentally-sound management of waste wherever it may be, no guidelines have been issued that address the reefing of ships.

Comment # O-I-57:

The most recent draft (August 2004) of the Basel Convention Technical Guidelines for

¹⁶ Environment Canada. 2001b. Clean-Up Standard for Ocean Disposal of Vessels. Revision 1 – July 2001
Environment Canada, Environmental Protection Branch, Pacific and Yukon Region.
http://www.pyr.ec.gc.ca/EN/ocean-disposal/english/cleanupstandard_jul01_e.htm#38

Environmentally Sound Management of Wastes Consisting of, Containing or Contaminated with Polychlorinated Biphenyls, Polychlorinated Terphenyls or Polybrominated Biphenyls¹⁷ does not consider ocean disposal as either a means of destruction or irreversible transformation of PCBs waste as required by the Stockholm Convention, nor does it consider ocean disposal as a means of PCB disposal in the case when destruction or irreversible transformation “does not represent the

environmentally preferable option”. The Basel Guidelines considers various environmentally sound destruction options, such as Alkali Reduction, Base Catalyzed Decomposition, Gas Phase Chemical Reduction, etc. to be in line with the mandates of the Stockholm Convention on POPs (the Stockholm requirements are discussed in the succeeding section) – ocean disposal is by no means a method of POPs *destruction*.

Response to Comment # O-I-57:

Although, as the commenter points out, guidance under the Basel Convention does not include ocean placement in its examples of environmentally-sound PCB disposal, the BMP guidance document is not intended to be a comprehensive listing of all acceptable approaches. The BMP guidance document identifies the TSCA regulatory requirements for PCBs.

TSCA consists of a stringent set of requirements that, as applied to reefing, would require removal and proper disposal of liquid PCBs, materials containing PCBs regulated for disposal, and materials containing PCBs as a result of spills. However, as the BMP guidance recognizes, PCBs other than liquids may be difficult to locate and remove. The BMP guidance document refers to the provisions in EPA’s TSCA regulations allowing for case-by-case disposal permits to dispose of PCB bulk product waste and PCB remediation waste (materials containing PCBs as a result of spills). Such permits would be based on EPA’s finding that the disposal method would not pose an unreasonable risk of injury to health or the environment. 40 CFR 761.61(c) and 761.62(c). Any PCB disposal approved under TSCA would be based on a risk assessment, and EPA will not approve disposal that is not environmentally sound.

While there may be complex issues regarding the extent of PCB bulk product waste or PCB remediation waste removal in individual reefing projects, EPA would consider those issues in the context of individual approval decisions under TSCA. EPA believes that TSCA approval processes are adequate to effectuate any relevant U.S. obligations under the Stockholm Convention.

Comment # O-I-58:

The Basel Convention was also required to look at the case when the POP content is considered “low” in accordance with the Stockholm Convention language. While the draft guideline is not specific as to how to deal with low levels of PCBs, it must be noted that the Basel Convention has already set a standard of 50ppm for the level at which PCBs should be controlled.¹⁸ This is also the level below which negotiations are determining that PCBs will be considered to be “low”. Thus, the EPA Guidance Document is remiss (according to international norms) to not manage PCBs above 50ppm (no matter whether they are in solid or liquid matrices) as being in a category that must be destroyed or irreversibly transformed.

Response to Comment # O-I-58:

EPA has decided not to make changes to the BMP guidance document in response to BAN’s comments regarding the Basel Convention. As BAN itself noted, the United States

is currently not a Party to the Basel Convention. In addition, even if the United States were a Party, the Basel Convention concerns the transboundary movement of hazardous wastes, as defined under the Convention. In the ship reefing context, there is no transboundary movement expected – that is, the ships will not be exported from the U.S. As the ship reefing activities occur completely outside of a transboundary transaction, it would appear that the Basel Convention would not apply. While guidelines developed under the Basel Convention are sometimes relevant to the environmentally sound management of waste wherever it may be, no guidelines have been issued that address the reefing of ships.

Stockholm Convention

Comment # O-I-59:

The Stockholm Convention, which entered into force May 17, 2004, is a global treaty to protect human health and the environment from persistent organic pollutants (POPs). POPs are chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of living organisms and are toxic to humans and wildlife. POPs migrate globally and can cause damage wherever they travel. PCBs are POPs, and are in fact one type of several POPs slated for global elimination under the Stockholm Convention.¹⁹ The United States has not ratified the Stockholm Convention yet, but has signed it and indicated every intention of ratifying it.

Response to Comment # O-I-59:

The U.S. is a signatory to the Stockholm Convention, but has not yet ratified the treaty. For further discussion, see *Response to Comment #s O-I-57, O-I-60, and P-8*. The comment appears to be merely an assertion of the commenter's own opinion rather than a comment on the draft BMP guidance. For this reason, no response is necessary.

Comment # O-I-60:

The Stockholm Convention among other things defines how the international community must manage POPs wastes. Article 6 (d) of the Stockholm Convention provides that each Party must:

Take appropriate measures so that such wastes, including products and articles upon becoming wastes, are:

X X X

1. *Disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants or otherwise disposed of in an*

¹⁷ See at http://www.basel.int/techmatters/popguid_may2004_wcc.pdf.

¹⁸ Annex VIII, entry A3180, Basel Convention.

¹⁹ Annex A, Stockholm Convention on Persistent Organic Pollutants.

environmentally sound manner when destruction or irreversible transformation does not represent the environmentally preferable option or the persistent organic pollutant content is low, taking into account international rules, standards, and guidelines, including those that maybe developed pursuant to paragraph 2, and relevant global and regional regimes governing the management of hazardous wastes;

The Stockholm Convention is unequivocal in its mandate that POPs content of substances, such as PCBs, must be destroyed or irreversibly transformed, or if the POPs content is low or destruction or irreversible transformation is not an environmentally sound option to undertake environmentally sound management options for the POPs wastes.

Response to Comment # O-I-60:

EPA has decided not to make any changes to the BMP guidance document in response to BAN's comments regarding the Stockholm Convention. The BMP guidance document references the TSCA regulatory requirements for PCBs. This is a stringent set of requirements that, as applied to reefing, would require removal of liquid PCBs, removal and proper disposal of materials containing PCBs regulated for disposal, and materials containing PCBs as a result of spills. However, as the BMP guidance recognizes, PCBs other than liquids may be difficult to locate and remove. The BMP guidance refers to the provisions in EPA's TSCA regulations allowing for case-by-case disposal permits to dispose of PCB bulk product waste and PCB remediation waste (materials containing PCBs as a result of spills). Such permits would be based on EPA's finding that the disposal would not pose an unreasonable risk of injury to human health or the environment. 40 CFR 761.62(c) and 761.61(c).

Although, as the commenter points out, guidance under the Basel Convention does not include ocean placement in its examples of environmentally sound disposal, the BMP guidance is not intended to be a comprehensive listing of all acceptable approaches.

Contrary to the commenter's assertion, the Stockholm Convention does not require removal of "all PCBs" from a vessel prior to reefing. While there may be complex issues regarding the extent of PCB removal in individual reefing projects, EPA would consider those issues in the context of individual approval decisions under TSCA. EPA believes that TSCA approval processes are adequate to effectuate any relevant U.S. obligations under the Stockholm Convention and therefore does not believe that additional discussion

of the Convention would be necessary or useful to the regulated community in the BMP guidance document.

Comment # O-I-61:

The Basel Convention as noted above has been tasked to work with the Stockholm Convention to determine the various environmentally sound options that can satisfy the mandate of the Stockholm Convention. And as previously highlighted, disposal at sea is *not* enumerated as an environmental option for dealing with PCBs nor does it meet the mandate of Article 6.

Response to Comment # O-I-61:

While guidelines developed under the Basel Convention are sometimes relevant to the environmentally sound management of waste wherever it may be, no guidelines have been issued that address the reefing of ships.

Any PCB disposal approved under TSCA would be based on a risk assessment, and EPA will not approve disposal that is not environmentally sound. Although, as the commenter points out, guidance under the Basel Convention does not include ocean placement in its examples of environmentally sound disposal, the BMP guidance is not intended to be a comprehensive listing of all acceptable approaches. For further discussion, see *Response to Comment # O-I-60*.

Comment # O-I-62:

The United States is a signatory to the Stockholm Convention, and is bound to respect and not undermine the Convention's provisions. Based on its international obligations, it is imperative for the United States to reconcile the Reefing Guidance with the requirements of the Stockholm Convention on the disposal of POPs, particularly PCBs in the vessels destined for reefing. The clearest way for the United States to accomplish this is by incorporating into the present draft of the Reefing Guidance a discussion of the legal requirements of the Stockholm Convention and elaborate the procedures for the *removal of all PCBs* on board the vessels prior to reefing. Such removed PCBs should then be subject to destruction technologies.

Response to Comment # O-I-62:

EPA has decided not to make changes to the BMP guidance in response to BAN's comments regarding the incorporation of a discussion pertaining to the legal requirements of the Stockholm Convention. EPA believes that TSCA approval processes are adequate to effectuate any relevant U.S. obligations under the Stockholm Convention and therefore does not believe that additional discussion of the Convention would be necessary or useful to the regulated community in the BMP guidance document. For further discussion, see *Response to Comment # O-I-60*.

London Convention and the 1996 Protocol

Comment # O-I-63:

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter²⁰, otherwise known as the London Convention, entered into force in August 30, 1975. The United States *is* a party to this Convention.

The London Convention covers the deliberate disposal at sea of wastes or other matter from vessels, aircraft, and platforms. It controls and prevents marine pollution through several means: by prohibiting the dumping of certain hazardous materials; requiring special permits for the dumping of a number of other identified materials; and requiring a general permit for the sea dumping of other wastes or matter.

The disposal or dumping of vessels and platforms or other man-made structures at sea is generally prohibited under the London Convention.²¹ An exception to this prohibition is

²⁰ See at http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=681#7. [hereinafter London Convention].

²¹ Art. 4 and Annex 1, London Convention.

13

when materials “capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent”.²²

Parties to the Convention are urged to take appropriate measures within their territory to prevent and punish conduct in contravention of the provisions of this Convention,²³ and to “ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention”.²⁴

Response to Comment # O-I-63:

The London Convention (LC) regulates “dumping,” which is a term of art specifically defined in LC Article III. Under the LC, the placement of vessels to create artificial reefs would not constitute dumping unless contrary to the aims of the LC. This is because Article III (1)(b)(ii) of the LC specifically provides that dumping does **not** include:

“placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.”

Creation of artificial reefs can fall within this exclusion, and it is the responsibility of the Party to determine if such placement would be contrary to the aims of the LC (see Report of 13th Consultative Meeting of Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, LC 13/15 at paragraph 7.5). The BMP

guidance document provides environmental best management practices through clean-up performance goals that are directed at the level of cleaning and/or removing materials of concern aboard vessels. The preparation of vessels in this manner will help ensure that their use as artificial reefs is environmentally sound. The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in the BMP guidance document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

Placement of vessels to create artificial reefs involves not only a purpose other than mere disposal, but also clean-up and siting practices to safeguard the environment and enhance environmental benefits associated with reef creation. Thus, use of vessels to create artificial reefs following application of the BMP guidance document would be well within the dumping exception set forth in Article III (1)(b)(ii) of the LC. In addition, the LC is implemented in the U.S. through Title I of the MPRSA. The placement of artificial reefs falls within certain specific exceptions in that legislation, as explained further below in the *Response to Comment # O-I-67*.

Moreover, contrary to the comment, even outright “dumping” of vessels is not “generally prohibited” by the London Convention (LC). In particular, Annex I, paragraph 11(d) of the LC expressly contemplates the issuance of permits for vessel “dumping” and the Parties to the LC have developed waste assessment guidelines for that purpose. *Waste-Specific Guidelines For Vessels Proposed For Disposal At Sea* (available on-line at: <http://www.londonconvention.org/>). Those LC vessel disposal guidelines make clear that the language from LC Annex I paragraph 11(d) quoted in the comment (referring to removal of material capable of causing pollution to the marine environment “to the maximum extent”) is subject to practical considerations (see LC vessel dumping guidelines at paragraph 5.2: “**Within technical and economic feasibility** and taking into consideration the safety of workers, to the maximum extent, (1) vessels shall be cleaned of potential sources of pollution . . .” (emphasis added)).

The narrative clean-up performance goal for PCBs, as provided in the draft BMP guidance document, is directed at the removal of all solid material containing PCBs ≥ 50 ppm unless a disposal permit has been granted under 40 CFR 761.62(c), as well as the removal of all liquid PCBs, which goes beyond paragraph 4.7 which merely states: “Removal of equipment containing liquid PCBs should be a priority.” It should be noted that the PCB narrative goal as presented in the final BMP guidance document has been revised and will read as follows:

“Remove all manufactured products containing greater than or equal to (\geq) 50 parts per million (ppm) of solid PCBs; remove all liquid PCBs regardless of

concentration; remove all materials contaminated by PCB spills where the concentration of the original PCB is ≥ 50 ppm.”

Comment # O-I-64:

In addition to its outstanding obligations under the London Convention, it is worth considering the United States’ further obligations under the London Convention’s 1996 Protocol.²⁵

The 1996 Protocol will supersede the Convention once the 1996 Protocol enters into force, and with this change, more stringent obligations are forthcoming. Although the 1996 Protocol provides a narrow possibility for the dumping of vessels, similar to the original London Convention, one of the most important provisions that impact the Reefing Guidance is that in the course of considering the dumping of vessels in the ocean, Contracting Parties must be mindful of the objectives of the Protocol and the General Obligations.

The objective of the 1996 Protocol is as follows:

Contracting Parties shall individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, *to prevent, reduce and where practicable eliminate pollution* caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.²⁶ (Emphasis supplied)

The thrusts of the objectives are three-fold, prevent, reduce, and eliminate. These are the standards that should be brought to bear in the Reefing Guidance.

Response to Comment # O-I-64:

While the U.S. is a Party to the LC, the U.S. is not yet a party to the 96 Protocol. Thus, the U.S. is not legally bound by the various provisions of the 96 Protocol referred to by the commenter in this and subsequent comments. The U.S. is a signatory to the 96 Protocol, however, and as such, may not act so as to defeat the object and purposes of the Protocol.

In considering that issue, it is important to note that the 96 Protocol contains the same exclusion from “dumping” discussed in *Response to Comment # O-I-63* above (See 96 Protocol Article 1 (4.2.2)). In addition, the *Waste-Specific Guidelines For Vessels Proposed For Disposal At Sea* discussed in *Response to Comment # O-I-63* are intended to be consistent with either the LC 72 or the 96 Protocol (see paragraph 1.1 of those guidelines). Thus, for the reasons given in *Response to Comment # O-I-63*, creation of artificial reefs using vessels prepared under the BMP guidance document would not be “dumping” under the Protocol, nor would such artificial reef creation be inconsistent with the Protocol. It certainly would not defeat the Protocol’s object and purposes.

With respect to the commenter’s concerns regarding the 96 Protocol’s “prevent, reduce, eliminate” objectives, that provision applies specifically to dumping or incineration at sea, neither of which is involved in creation of artificial reefs. Additionally, it relates to

“pollution” -- itself a term of art defined in the 96 Protocol as the introduction of wastes or other matter “which results or is likely to result in” deleterious effects. 96 Protocol Article 1(10). There are a wide variety of domestic laws that protect our ocean and coastal waters, many of them tailored to address specific types of activities or materials. The creation of artificial reefs is regulated under a number of separate statutes, including the National Fishing Enhancement Act, section 10 of the Rivers and Harbors Act, section 404 of the CWA, and TSCA. Activities permitted under those statutes must comply with the requirements of the Coastal Zone Management Act, when applicable. Moreover, the vessels of the Navy to be used as artificial reefs must be prepared according to the BMP guidance document developed pursuant to the National Defense Authorization Acts for Fiscal Years 2003 and 2004. The clean-up practices identified in the BMPs, coupled with applicable domestic regulatory regimes such as those just presented and discussed elsewhere in this response to comment document, are intended to avoid deleterious effects or the likelihood of such effects.

We also wish to note that the commenter’s assertion that the 96 Protocol will “supersede” the LC upon the Protocol’s entry into force is not accurate. Such supersession would only occur as between Contracting Parties to both the LC and the 96 Protocol. See, 96 Protocol, Article 23.

Comment # O-I-65:

Supporting the objectives are the general obligations established in Article 3 of the Protocol. One of the important Party obligations is to take the *precautionary approach* whereby “appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.”²⁷

Given what we have learned above about the fact that no reliable data exists to date with respect to transport and fate of PCBs in the marine environment from PCB in solid matrix materials found on board of obsolete vessels, it is clear that the precautionary approach applies in this instance.

Response to Comment # O-I-65:

The provisions regarding a “precautionary approach” appear in 96 Protocol Article 3(1), which applies to contracting parties “in implementing this Protocol.” The BMP guidance document is consistent with the 96 Protocol and U.S. obligations related to the Protocol, as explained in *Response to Comment # O-I-64* and elsewhere in this response to comments document. In addition, the precautionary approach referred to in this comment calls for “appropriate preventive measures” when there is reason to believe the introduction of matter is “likely” to cause harm. For the reasons noted in the *Response to Comment # O-I-64*, as well as *Response to Comment #s D-2, F-2, O-I-4, O-I-5, O-I-29* and elsewhere, placement of vessels to create artificial reefs following use of the BMP guidance document clean-up performance goals and the regulations under applicable domestic law is not “likely” to cause harm, and the BMP guidance document in any event contains appropriate

preventive measures in the form of guidance on removal of even potentially harmful material.

²² Annex 1, Section 11(d), London Convention.

²³ Art. VII (2), London Convention.

²⁴ Art. VII (4), London Convention.

²⁵ 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, *see at* http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=681#7. [hereinafter 1996 Protocol].

²⁶ Art. II, 1996 Protocol.

²⁷ Art. III (1), 1996 Protocol.

Comment # O-I-66:

Further, the 1996 Protocol places responsibilities on polluters when it states that "the polluter should, in principle, bear the cost of pollution"²⁸ and it emphasizes that Contracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the environment to another.²⁹

Response to Comment # O-I-66:

The "polluter should pay" approach to which this comment refers appears in 96 Protocol Article 3(2), which provides a Party should "endeavor to promote practices" whereby those it authorizes to engage in "dumping" bear the cost of meeting pollution prevention and control requirements for the authorized activity. The BMP guidance document is consistent with the 96 Protocol and U.S. obligations related to the Protocol, as explained in *Response to Comment # O-I-64* and elsewhere in this response to comments document. In any event, the cost of vessel clean-up and placement already are in fact born by the Navy (in the case of decommissioned naval vessels) or the project sponsor placing the artificial reef (in the case of other obsolete vessels).

With regard to transfer of pollution from one part of the environment to another, the relevant 96 Protocol provision, which appears in Article 3(3), states that in implementing the Protocol, Parties shall act so as not to "transfer directly or indirectly damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another." For the reasons given in *Response to Comment # O-I-64* and elsewhere in this response to comments document, we do not believe placement of vessels using the clean-up practices and site selection recommendations of the BMP guidance document would be inconsistent with the 96 Protocol.

Comment # O-I-67:

The London Convention and its 1996 Protocol, as international laws, are implemented in the United States through Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA), which mandates that the EPA apply binding requirements of the London Convention to the extent

that this would not relax the MPRSA.³⁰ Notably, the MPRSA is not mentioned in the Reefing Guidance as one of several US legislations that may apply to vessel-reefing projects.

Response to Comment # O-I-67:

The 96 Protocol is not implemented by the MPRSA. The MPRSA does not currently address the 96 Protocol (see also *Response to Comment # O-I-64*).

The LC is implemented in the U.S. through Title I of the MPRSA. Specifically, the MPRSA addresses “dumping” as defined in Section 3(f), 33 U.S.C. § 1402(f), of the Act, and directs EPA in establishing or revising the ocean dumping criteria to “apply the standards and criteria binding upon the United States” under the LC, to the extent this would not result in relaxation of MPRSA requirements. 33 U.S.C. § 1412(a). The ocean dumping criteria issued by EPA fulfill this MPRSA requirement. 40 C.F.R. 220.1(b).

With regard to LC implementation and the MPRSA, as explained in *Response to Comment # O-I-63* and elsewhere, placement of artificial reefs using the clean-up performance goals and site selection recommendations presented in the draft BMP guidance document is not “dumping” subject to the LC or MPRSA. MPRSA regulates the transportation of material from the United States for the purpose of disposing it into ocean waters. “Dumping,” however, does not include the placement of structures or devices in the ocean for a purpose other than disposal (e.g., for fisheries enhancement, aids to navigation, or scientific research) provided that such placement is otherwise regulated by federal or State law or occurs pursuant to an authorized federal or state program.

The LC regulates “dumping,” which is a term of art specifically defined in LC Article III. Under the LC, the placement of vessels to create artificial reefs would not constitute dumping unless contrary to the aims of the LC. This is because Article III (1)(b)(ii) of the LC specifically provides that dumping does not include:

“placement of matter for a purpose other than the mere disposal thereof, provided that such placements is not contrary to the aims of this Convention.”

Creation of artificial reefs can fall within this exclusion, and it is the responsibility of the Party to determine if such placement would be contrary to the aims of the LC (see Report of 13th Consultative Meeting of Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, LC 13/15 at paragraph 7.5).

Placement of vessels to create artificial reefs involves not only a purpose other than mere disposal, but also clean-up and siting practices to safeguard the environment and enhance environmental benefits associated with reef creation. Thus, use of vessels to create artificial reefs is not contrary to the aims of the LC, and would be well within the dumping exception set forth in Article III (1)(b)(ii) of the LC. In addition, the LC is implemented in the U.S. through Title I of the MPRSA and the placement of artificial reefs falls within certain specific exceptions in that legislation.

While the U.S. is a party to the LC, the U.S. is not yet a party to the 96 Protocol. Thus, the U.S. is not legally bound by the various provisions of the 96 Protocol.

In considering this issue, it is important to note that the 96 Protocol contains the same exclusion from “dumping” previously discussed above in regard to the London Convention. Thus, for the reasons stated above, creation of artificial reefs using vessels would not be “dumping” under the Protocol, nor would such artificial reef creation defeat the object and purposes of the 96 Protocol.

Comment # O-I-68:

Given the foregoing facts, we urge that the MPRSA be considered and included, and that US EPA and the US Maritime Administration revisit the Reefing Guidance and consider the implications of the United States’ obligations under the London Convention and its 1996 Protocol.

Response to Comment # O-I-68:

Matters related to the MPRSA, LC, and 96 Protocol have been addressed in the *Response to Comment #s O-I-63* through 67, and for the reasons given therein, we do not believe that a revisiting of the BMPs, as suggested, is warranted.

Comment # O-I-69:

Most immediately the EPA needs to study the legal implications of the term found in the London Convention “maximum extent” with respect to removal of hazardous materials. By any fair interpretation such strong language implies “to the extent possible”.

Thus EPA’s allowance of PCBs or any other toxic substance that *can* be removed prior to ocean disposal is insupportable even under the original London Convention to which the USA is a party. An explanation by the government must be provided as to why they fail to assert that *all* hazardous substances must be removed and risk based approaches to ocean disposal in our precious marine environment are in fact unsupportable.

Response to Comment # O-I-69:

The legal implications, LC interpretative guidance related to the “maximum extent” language (which applies in the context of ocean dumping of vessels), and the relationship of the LC to artificial reefing have already been addressed in *Response to Comment # O-I-63* above. Moreover, the commenter’s request that “*all*” hazardous substances be removed goes beyond both the text of the LC and the LC vessel dumping guidance issued thereunder. With regard to “risk-based approaches,” see *Response to Comment # O-I-72* below.

Comment # O-I-70:

Given the above information, regarding international law, MARAD and EPA's proposed guidance allowing ocean disposal of PCB waste both below and above 50ppm, not only stands to violate the objective laid out in Sect. 3516 of the NDRA requesting the EPA to "recommend practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs", but stands to violate international law as well.

Response to Comment # O-I-70:

Regarding the comment on international law, refer to responses to comments above, in particular *Response to Comment #s O-I-53, O-I-55, O-I-57, O-I-60, O-I-63, O-I-64, and O-I-67*. In addition, the assertion that the BMP guidance would "allow ocean disposal" is fundamentally incorrect; the BMP guidance document provides technical guidance on clean-up and siting practices for artificial reefs and does not in any way authorize placement of vessels. For further discussion, see *General Response # O-I-0 To Basel Action Network Comments* and *Response to Comment # O-I-67*.

V. Conclusion

Comment # O-I-71:

As we have noted above, the practice of disposing of ships through the avenue of ocean disposal, even by claiming an "alternative use", is not the most appropriate waste management practice available to the United States. Such dumping is in fact a form of disposal.

Response to Comment # O-I-71:

With regard to the comment pertaining to placement of vessels as reefs being ocean disposal, please refer to responses to comments above, in particular *Response to Comment #s O-I-1, O-I-5, O-I-11, O-I-15, O-I-17, O-I-18, and O-I-20*.

Comment # O-I-72:

Further, the Reefing Guidance fails to adequately protect the marine environment from hazardous substances and in particular one of the most infamous persistent organic pollutants - PCBs. The notion that PCBs (all of which are liquid in normal temperatures) in a solid or liquid matrix have

²⁸ Art. III (2), 1996 Protocol.

²⁹ Art. III (3), 1996 Protocol.

³⁰ Section 102 (a), Marine Protection, Research and Sanctuaries Act, 33 USC § 1401 et seq.

widely different environmental impacts is not supported by science, particularly when that science is appropriately guided by the precautionary principle. PCBs and their known endocrine disruptive

effects are active at extremely low levels. This fact combined with the risk of releasing PCBs in the marine environment when this risk can be avoided, makes it obvious that a risk based approach for the release of PCBs is not appropriate.

Response to Comment # O-I-72:

EPA has not made the determination that there is a no unreasonable risk to health or the environment from sinking a vessel containing regulated levels of PCBs as an artificial reef.

Comment # O-I-73:

Finally, as we note, and the Reefing Guidance fails utterly to describe, the use of the marine environment to dispose of PCBs is in contravention to international laws and norms some of which are immediately binding on the United States.

Response to Comment # O-I-73:

For the reasons set out in the responses to comments given above, the BMP guidance document does not contravene international laws and norms. In addition, as noted in our *General Response # O-I-0 to Basel Action Network Comments* and *Response to Comment # O-I-67*, the BMP guidance document in no way authorizes the use of the marine environment either for disposal of PCBs or placement of artificial reefs. Such use of the marine environment can only occur after all necessary regulatory authorizations are obtained.

Comment # O-I-74:

The final conclusions and thus our recommendations that should be adopted in this Reefing Guidance are as follows:

- 1. Disposal of obsolete vessels at sea should only be undertaken if recycling and resource recovery is not possible.**
- 2. If such recycling is not possible, all hazardous substances and wastes, including PCBs in any form and at any concentration level should be removed to the extent possible prior to ocean dumping of waste vessels.**

Response to Comment # O-I-74:

Neither Congress nor EPA intended that the BMP guidance document discuss vessel disposal options. A given vessel management option is unique to that particular vessel. The BMP guidance document does not attempt to make universal suggestions as to which management option is the most or least preferred.

The BMP guidance document discusses the preparation of vessels when employing the vessel management option of artificial reefing. This guidance identifies materials or categories of materials of concern that may be found aboard vessels. For each material or category of material, the BMP guidance provides a narrative clean-up performance goal

and information on methods for achieving those goals in preparation of the vessel prior to sinking.

Comment # O-I-75:

The fate of the oceans and the creatures that live in it are intricately linked with the lives of humans. At this point in time, we all have been slow and blissfully ignorant to realize the kind of devastation our race has brought upon the oceans. Fish stocks once in abundance are depleted, aquatic habitats destroyed, certain fish types, a valuable source of protein and sustenance for millions, are increasingly deemed inedible due to the toxins they bear such as mercury and PCBs.

We cannot afford to pretend in childish naiveté that our ocean environment is a limitless playground or dumping ground for our outgrown societal toys. The Reefing Guidance developed by the US Environment Protection Agency and the Maritime Administration must take our collective responsibility to heart. Serious measures are required to arrest a drastic problem; we owe this much to the environment and to the generations after us.

Response to Comment # O-I-75:

This comment expresses the opinions of the commenter on the importance of the marine environment and its current state. EPA shares the commenter's concern about the need to protect the marine environment. EPA believes use of the BMP guidance document and adherence to the existing regulatory regimes governing the placement of artificial reefs will help ensure not only protection of the marine environment, but its enhancement by the creation of artificial reef habitat.

END

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Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0027

Author Date: September 30, 2004

Author: Richard Gutierrez and Jim Puckett
Basel Action Network

Comment # O-II-1:

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Counsel for Plaintiffs
Basel Action Network, a Project of the Tides Center; and Sierra Club

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BASEL ACTION NETWORK, a project of
the Tides Center,
1827 39th Avenue East
Seattle, WA 98112,

SIERRA CLUB,
11986 Elmgrove Circle
Cincinnati, OH 45240,

Plaintiffs,

v.

MARITIME ADMINISTRATION, and Capt.
WILLIAM G. SCHUBERT, in his official
capacity as Administrator,
400 7th Street, SW
Washington, DC 20590

ENVIRONMENTAL PROTECTION
AGENCY, and MARIANNE HORINKO, in
her official capacity as Acting Administrator,
1200 Pennsylvania Avenue, NW
Washington, DC 20460,

Defendants.

Case No.: 03CV02000

DECLARATION OF PETER L. deFUR,
PH.D., IN SUPPORT OF PLAINTIFF'S
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Date: October 1, 2003

Time: 9:30AM

Courtroom: 6

The Honorable Rosemary M. Collyer

1
2 I, Peter L. deFur, Ph.D., declare as follows:

3 Qualifications

4 1. I am a nationally recognized expert on ecological risk assessment
5 pertaining to endocrine disrupting chemicals and the generation, release, and discharge of toxic
6 chemicals. I have particular knowledge of and familiarity with contamination caused by
7 polychlorinated biphenyls (PCBs) .

8 2. I am President of Environmental Stewardship Concepts, an independent private
9 consultant, and serve as a technical advisor to citizen organizations and government agencies. I
10 am an Affiliate Associate Professor in the Center for Environmental Studies at Virginia
11 Commonwealth University where I conduct research on environmental health and ecological risk
12 assessment. I am President of the Association for Science in the Public Interest (ASIPi) and on
13 the board of the Science and Environmental Health Network (SEHN).

14 3. I was previously a senior scientist at the Environmental Defense Fund (now ED) in
15 Washington, D.C., and held faculty positions at two universities before that. I have extensive
16 experience in risk assessment and ecological risk assessment regulations, guidance and policy. I
17 served on the NAS/NRC Board on Environmental Studies and Toxicology and on various study
18 committees, including the Risk Characterization Committee that released its report, *Understanding*
19 *Risk* in June 1996. I served on numerous scientific reviews of EPA ecological and human health
20 risk assessments, including the assessment for the WTI incinerator in Ohio, EPA's Ecological Risk
21 Assessment Guidelines and EPA's Endocrine Disruptor Screening and Testing Advisory
22 Committee.

23 4. I received B.S. and M.A. degrees in Biology from the College of William and
24 Mary, in Virginia and a Ph.D. in Biology from the University of Calgary, Alberta. I was a
25 postdoctoral fellow in neurophysiology in the Department of Medicine at the University of
26 Calgary.

27 5. I conduct research on the identification of and effects of endocrine disrupting
28 chemicals, particularly in aquatic crustaceans. I also explore the effects of low oxygen conditions

1 on aquatic animals and systems in estuaries and coastal environments. In addition, I conduct
2 research on precautionary approaches to environmental regulations and on citizen involvement in
3 environmental programs, policies, and regulations

4 6. I was appointed to BEST of the National Academy of Sciences/National Research
5 Council in 1996. I am on the Advisory Committee to the Board of the Coalition to Restore Coastal
6 Louisiana and a peer reviewer for professional journals. I have published numerous peer reviewed
7 articles, invited perspectives and review articles for the public on subjects ranging from habitat
8 quality to wetlands, toxic chemical, and risk assessment. During the past ten years, I have been
9 extensively involved in scientific research, regulation and policy concerning the generation, release
10 and discharge of dioxin and related compounds. I have published numerous papers on regulation
11 and policy aspects of these compounds, considered in many ways prototype endocrine disruptors. I
12 have been extensively involved in the EPA reassessment of dioxin since 1991. I was a technical
13 advisor to the EPA Superfund Ombudsman office and am presently technical advisor for the Port
14 Angeles clean-up of the Rayonier mill site, for the cleanup of PCB's in the Housatonic River in MA
15 and CT, for the cleanup of PCB contaminated sediment in Seattle, WA and Port Angeles, WA, and
16 to citizens groups for the Rocky Mountain Arsenal superfund site.

17 7. I serve as a technical consultant to citizen organizations that are involved in
18 cleanup actions at contaminated sites around the country.

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21 Immediate Environmental Impacts of the Defendant's Proposed Actions

22 8. In November 1998, I presented a paper entitled "Toxic Chemicals: Can What
23 We Don't Know Harm Us?" at the conference "Health of the Bay — Health of People"
24 sponsored by The Center for a Livable Future of the Johns Hopkins School of Hygiene and
25 Public Health and the Chesapeake Bay Foundation. That paper was subsequently converted to
26 an article in which I shared authorship credit with Lisa Foersom. The article was eventually
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published in the year 2000 in the scholarly scientific journal *Environmental Research*.¹

9. The article contends and I still maintain that new and existing data on environmental levels of chemicals, particularly PCBs, and their effects at low concentrations provide evidence that toxic chemicals may threaten both human and nonhuman health in the wider Chesapeake Bay system, most notably in Virginia's James River.

10. An initial assessment of the distribution and concentration of toxic chemicals in the Chesapeake Bay region conducted by the U.S. Environmental Protection Agency in 1983 concluded that such contamination constituted a threat to resources in specific areas of the Bay, particularly in the James River.² A subsequent study conducted by Helz and Hugget in 1987 resulted in similar findings.³

11. A reexamination of the contamination problem in 1997 and 1998 by Virginia scientists led to further understanding of contamination in the James River. Found in sufficiently high levels to warrant concern were PCBs.⁴

12. PCBs are particularly important as contaminants in that they do not necessarily have an immediate toxic effect at levels in the general environment, yet may cause effects in fish, wildlife, or humans or in isolated places. In aquatic ecosystems, PCBs are found primarily in sediments because they are highly fat-soluble and not water-soluble. Humans are exposed principally, but not exclusively through the food chain by eating animals, notably fish that have accumulated PCBs from the sediments. In some cases, the concentrations of PCBs are increased through food chain accumulation and biomagnification as one animal eats another that already contains PCBs. The exposure of humans to PCBs in the Bay system that includes the James River

¹ Peter L. deFur & Lisa Foersom, *Toxic Chemicals: Can What We Don't Know Hurt Us?*, 82 ENVIRONMENTAL RESEARCH 114 (2000).

² CHESAPEAKE BAY PROGRAM OFFICE, ENVIRONMENTAL PROTECTION AGENCY, CHESAPEAKE BAY: A FRAMEWORK FOR ACTION (1983).

³ G. Helz & R.J. Hugget, *Contaminants in Chesapeake Bay: The Regional Perspective*, in CONTAMINANT PROBLEMS AND MANAGEMENT OF LIVING CHESAPEAKE BAY RESOURCES 270-297 (S.K. Majumdar et al. eds. 1987).

is from two major sources: 1) from eating seafood and other aquatic animals and 2) from inhaling PCBs from the atmosphere.

13. Among the contributors of PCBs and other contaminants to the James River are industrial and municipal discharges from large ships.

14. Should it occur, additional contamination of the James River with PCBs from National Defense Reserve Fleet vessels in transport would likely cause extensive damage to the James River ecosystem and pose a substantial threat to human health.

15. The effects of PCB's on human health and the environment are on reproduction, development of the fetus or embryo, growth and development of the brain, the function of immune systems, and PCB's can cause cancer. Some PCB's act through a mechanism that combines PCB's, dioxins and furans in a common pathway, so that all the dioxins, furans and PCB's exert a single action.

16. Children are particularly sensitive to the effects of PCB's, as recently reported in a paper by S. Schantz et al. (2003)⁵ in which she summarized the effects of PCB's on children by analyzing a series of large investigations on the subject conducted in the US and abroad. The conclusion is that early exposure to even low levels of PCB's can cause impairment of the brain and of behavior.

17. Fish, birds, and marine mammals are especially sensitive to the effects of PCB's. Even concentrations of less than a part per billion in eggs can impair the growth of these animals, or alter the normal growth of the young. This topic has been the subject of a number of scientific reviews.⁶

18. In my professional opinion, the likelihood of an accident will substantially increase if the aged ships are transported great distances on open oceans. The consequences of an accident can be reasonably expected to be contamination of fish, birds, mammals with PCB's. This contamination, if it occurs in the vicinity of the Chesapeake Bay or coastal waters, may harm natural populations and contaminate fisheries to the point that human health would be at risk. This

⁴ G. GARMAN ET AL., FISH TISSUE ANALYSIS FOR CHLORDECONE (KEPONE) AND OTHER CONTAMINANTS IN THE JAMES RIVER, VIRGINIA (1998).

⁵ S. Schantz et al., (2003). Effects of PCB exposure on Neuropsychological function in children. Environmental Health Perspectives vol 111: 357-376.

1 sequence of events would demand the closing of Bay fisheries for commercial and recreational
2 activity, as has happened on the Hudson and Housatonic Rivers from PCB contamination.
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28 ⁶ Rice, C.P., P. W. O'Keefe and T.J. Kubiak. 20023. Sources, Pathways and Effects of PCB's Dioxins and
Dibenzofurans. Pp 501- 573 In: Hoffman, D.J., B.A. Rattner, G.A. Burton and J. Cairns, Jr. Handbook of
Ecotoxicology, 2nd Ed. Lewis Pub. Boca Raton FL.

Education: Peter L. deFur, Ph.D.

Postdoctoral Fellow	1980	Faculty of Medicine,	Physiology
	-1981	University of Calgary	
Ph.D.	1980	University of Calgary	Biology
M.A.	1977	The College of William & Mary	Biology
B.S.	1972	The College of William & Mary	Biology

Experience: Peter L. deFur, Ph.D.

Affiliate Associate Professor	1995 –	Center for Environmental Studies, Virginia
	Present	Commonwealth University, Richmond, Virginia
President	1996 –	Environmental Stewardship Concepts, Richmond,
	Present	Virginia
Adjunct Senior Scientist	1996 – 1997	Environmental Defense Fund, Washington, D.C.
Senior Scientist	1992 – 1996	Environmental Defense Fund, Washington, D.C.
Scientist	1990 – 1991	Office of the Environmental Defense Fund,
		Richmond, Virginia
AAAS Environmental	1989	U.S. Environmental Protection Agency,
Service Fellow		Washington, D.C.
Associate Professor, member	1988 – 1989	Department of Biological Sciences, Southeastern
of the Graduate faculty		Louisiana University, Hammond, Louisiana
Visiting Investigator	1987 – 1988	Smithsonian Environmental Research Center,
		Edgewater, Maryland
Assistant Professor, member	1981 – 1988	Department of Biology, George Mason University,
of the Environmental Biology		Fairfax, Virginia
and Public Policy Faculty		

I declare under penalty of perjury and under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of September, 2003 in Seattle, Washington.

Peter L. deFur, Ph.D.

Response to Comment # O-II-1:

The attached Declaration does not provide comments on the draft BMP guidance; therefore, no response is necessary.

Docket ID: EPA-HQ-OW-2004-0003. <i>"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."</i> 69 Fed. Reg. 46141 (August 2, 2004).	
Public Comment	
Docket Document ID:	EPA-HQ-OW-2004-0003-0028
Author Date:	September 30, 2004
Author:	Ellie Irons Office of Environmental Impact Review Commonwealth of Virginia Department of Environmental Quality

Comment I-III-1:

OW-2004-0003



OCT 1 - 2004

10-04-04 P03:03 IN

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Fax (804) 698-4500 TDD (804) 698-4021

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

September 30, 2004

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003
RE: Draft National Guidance: Best Management Practices for Preparing Vessels
Intended to Create Artificial Reefs (DEQ #04-164F).

Dear Sir/Madam:

This letter is provided to clarify the Department of Environmental Quality's September 28, 2004 comments on the above-referenced project. Page 2, paragraph 4 in the "Comments" section of our letter to your office. Our initial correspondence indicated that the Draft National Guidance document addressed the topic of waste from a toxic and hazardous perspective. This is incorrect since the document does not specifically address hazardous or solid wastes, but instead, the Draft National Guidance document only addresses some toxic and hazardous substances.

The new Page 2, paragraph 4, "Comments" section should read as follows:

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

We are sending this letter and a corrected version of our September 28, 2004 letter by email in order to reach your office by the October 1, 2004 deadline.

Response to Comment I-III-1:

The corrected version of the September 28, 2004 letter was received and will follow as part of this Public Comment Document (Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0028).

We will follow up this email with a signed copy and 3 originals of both letters in the mail. We regret any inconvenience that may have resulted from this error. Thank you for the opportunity to comment on this matter.

Sincerely,


Ellie Irons, Program Manager
Office of Environmental Impact Review

Cc: Allen Brockman, DEQ-Waste



COMMONWEALTH of VIRGINIA

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September 28, 2004

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

ATTN: Docket ID No. OW-2004-0003

RE: Draft National Guidance: Best Management Practices for Preparing Vessels
Intended to Create Artificial Reefs (DEQ #04-164F).

Dear Sir/Madam:

The Commonwealth of Virginia has completed its review of the above-referenced guidance. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal environmental documents and responding to appropriate federal officials on behalf of the Commonwealth. The following agencies and planning district commission participated in this review:

Department of Environmental Quality
Department of Game and Inland Fisheries
Department of Conservation and Recreation
Virginia Port Authority
Virginia Institute of Marine Science
Hampton Roads Planning District Commission

The Department of Health and the Marine Resources Commission were also invited to comment.

Project Description and Purpose

The Environmental Protection Agency (EPA), with support from the Department of Transportation's Maritime Administration (MARAD), intends to provide a national, environmentally-based best management practices guidance for the preparation of vessels to be

Draft National Guidance
Docket ID No. OW-2004-0003
Page 2

sunk with the intention of creating artificial reefs in permitted artificial reef construction areas.

Comment I-III-2:

Artificial reefs should be developed in a manner that enhances marine resources and benefits the marine environment. Strategically sited artificial reefs not only enhance aquatic habitat, but also provide an additional option for conserving, managing and/or developing fishery resources.

Response to Comment I-III-2:

EPA agrees with this comment. As stated in the BMP guidance document, the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources. Further, the BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The clean-up performance goals provided in the BMP guidance document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

Comment I-III-3:

Although the best management practices presented in the Draft Guidance document are intended for use when preparing vessels to serve as artificial reef habitat, the best management practices may have applicability to other in-water uses of vessels, such as the creation of recreational diving opportunities, and placement of breakwaters or other types of barriers. When preparing a vessel for other permitted in-water uses, consideration should be given to vessel stability and integrity prior to and after final placement.

Response to Comment I-III-3:

This comment is merely restating what is provided in the draft BMP guidance document, and presumably, no response would be necessary. However, revisions made to the draft BMP guidance document include the deletion of any discussions pertaining to the placement of vessels to serve as breakwaters or other types of barriers.

Comment I-III-4:
Comments

In general, the Commonwealth supports the EPA in providing national, environmentally-based best management practices as set forth in the guidance document. Please note, however, the guidance document does not preclude the Commonwealth from commenting on future site-specific projects. Any proposed projects located in Virginia's coastal zone would be subject to review under the Virginia Coastal Resources Management Program (VCP) and would require the project proponent to submit a consistency determination to this office for review.

Response to Comment I-III-4:

The best management practices described in the BMP guidance document will serve as national guidance for the preparation of obsolete and decommissioned military and commercial vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for obsolete MARAD and Navy vessels, the development of this guidance is timely. Currently, no guidance of this kind is available.

The BMP guidance document does not substitute for any statute or regulation, nor is it a regulation itself. The document recommends environmental best management practices for use in the preparation of vessels for use as artificial reefs. Associated with the recommended environmental best management practices are narrative environmental clean-up performance goals, as well as recommendations and suggestions in furtherance of those goals. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity. The BMP guidance document notes that state and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate state and local authorities to identify such further requirements.

Further revisions to the BMP guidance document demonstrates how the use of this guidance document may help support permit applications under the Clean Water Act section 404 or Rivers and Harbors Act section 10, as well as consistency determinations under the Coastal Zone Management Act. More specifically, the following language will be included in the final BMP guidance document:

“When preparing a vessel that is intended to serve as an artificial reef, documenting the clean-up procedures used and the contaminants that will remain onboard the vessel is a key element of the BMPs. More specifically, a description of how the BMP narrative clean-up goals were achieved, and a visual inspection, are needed to determine whether and how the vessel has been cleaned to the level recommended in this guidance document so the vessel can be managed appropriately. A vessel inspection by qualified personnel should be conducted to confirm satisfactory clean-up/preparation. It also should be noted that applicable regulatory regimes may require such an inspection.

Achieving and verifying satisfaction of the BMP clean-up goals could help support permit applications under the Clean Water Act Section 404 or Rivers and Harbors Act Section 10, if a permit application is submitted to the U.S. Army Corps of Engineers. Further, robust BMP documentation might prove useful for demonstrating consistency with Coastal Zone Management Act programs, as well as for any other State or local certifications necessary to carry out a vessel-to-reef project. Also, EPA officials may find BMP documentation useful as part of their review under EPA certification authority per the Liberty Ship Act. (Note: this Act only applies to DOT/MARAD-owned obsolete vessels intended for use as an artificial reef for the conservation of marine life.)”

Finally, for the convenience of the reader as a starting point, the final BMP guidance document includes Appendix B which identifies selected federal statutes relevant for consideration in the preparation of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential relevance and briefly summarizes the relevant provisions. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. In addition, State and local laws also may apply to vessel preparation, but the document does not attempt to identify such laws in Appendix B.

Comment I-III-5:

Comments submitted by reviewers during the Commonwealth's review of the draft guidance document are attached for your review. A summary of these comments follows.

The Department of Game and Inland Fisheries supports the siting guidance that stipulates that while artificial reefs can improve local fishery resources, care must be taken to avoid locating a reef where it may adversely impact wildlife resources (Draft Guidance Document, pages 11-12).

Response to Comment I-III-5:

EPA agrees, but no changes to the draft BMP guidance document are needed.

Comment I-III-6:

Since the document excludes discussion of hazardous and solid wastes, the DEQ-Waste Division recommends that the Final National Guidance document address hazardous waste laws and regulations, including the Resources Conservation and Recovery Act and state analogues, along with hazardous substances, as addressed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and solid waste laws and regulations.

Response to Comment I-III-6:

EPA modified the draft BMP guidance document to acknowledge the importance of appropriate storage and disposal of waste generated during vessel clean-up/preparation.

More specifically, the following addition will be made to the final BMP guidance document's Executive Summary:

“The narrative clean-up goals for the materials of concern highlighted in this guidance should be achieved while preparing a vessel intended for artificial reefing. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document. These include, but are not limited to, issues such as vessel inspections by appropriate authorities and storage and disposal of waste generated during clean-up/preparation.

EPA also expanded the list in Appendix B to include the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act. Appendix B identifies selected federal statutes relevant for consideration in the preparation of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential relevance and briefly summarizes the relevant provisions. The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized.

The final preparation plan for any particular artificial reef project will necessarily be vessel-specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations. In addition, State and local laws also may apply to vessel preparation, but the document does not attempt to identify such laws in Appendix B.

Other than the abovementioned, no further revisions pertaining to the handling and disposal of wastes generated during vessel preparation will be included. To incorporate revisions pertaining to additional State and local laws that may also apply to vessel-to-reef projects is not within the purview of this document.

Comment I-III-7:

The Department of Environmental Quality's Northern Regional Office (NRO) states that the guidance outlined in the document on the removal of toxic and/or hazardous substances

should minimize impacts to water quality. However, both the DEQ-NRO and the DEQ-Tidewater Regional Office state that the document does not address the handling and disposal of wastes generated during vessel preparation. The DEQ-NRO suggests that information should be added to the Executive Summary and each section of the document stating that all waste generated during the preparation of the vessels must be stored and disposed of according to 40 CFR 260 through 265 and all applicable state regulations. Also, discussion should be added to Appendix B citing the hazardous waste regulations under 40 CFR 261 through 265.

Response to Comment I-III-7:

See *Response to Comment #s J-I-8 and I-III-6*.

Comment I-III-8:

In addition, the guidance document should address the use of appropriate spill containment during the sinking of the vessels to capture any oil or fuel that appears on the surface and that the party responsible for sinking the vessel should be prepared to capture and clean up any residual material.

Response to Comment I-III-8:

The BMP guidance document provides guidance for the preparation of a vessel intended to create an artificial reef. Discussions of “appropriate spill containment during the sinking of a vessel to capture any oil or fuel that appears on the surface” is beyond the scope of the document and this type of concern would be addressed in a sink plan. The final BMP guidance document states that “this document does not provide information on how to sink a vessel or the required actions or regulatory procedures/processes associated with the act of sinking a vessel.”

Additionally, the formation of such an oily sheen would be highly unlikely if the clean-up performance goal for oil and fuel is achieved. That narrative clean-up goal reads as follows:

“Remove liquid fuels and oils and semi-solids (greases) so that: no visible sheen is remaining on the tank surfaces (this includes all interior fittings, piping, structural members); no film or visible accumulation is remaining on any vessel structure or component (e.g., on machinery or from spills on decking or carpet). The end result of such clean-up should be that no sheen be visible upon sinking a vessel.”

Comment I-III-9:

General Information

The Draft Guidance document (page 6) states that the document does not cover the specific statutory requirements and associated regulations as well as permit processes applicable to the process of preparing a vessel for reefing. However, the DEQ-Waste Division would like to provide

some general information that would be relevant to any proposal for preparation of and the sinking of a vessel in waters of the Commonwealth of Virginia.

The DEQ-Waste Division states that for any ship disposal/Artificial Reef project, soil or ship-related material that is suspected of contamination, or wastes that are generated in or prior to the disposal process, must be tested and disposed of in accordance with applicable Federal, State and local laws and regulations. Some of the applicable state laws and regulations in Virginia are the Virginia Waste Management Act, Code of Virginia Sections 10.1-1400 *et seq.*, the Virginia Hazardous Waste Management Regulations (9V AC 2-60) and the Virginia Solid Waste Management Regulations (9V AC 20-110). Some of the applicable Federal laws and regulations include the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.* and the applicable regulations contained in Title 40 of the Code of Federal Regulations, and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials. 49 CFR Parts 107.

In addition, ship-related structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition or disposal. If ACM or LBP are found, in addition to the federal waste-related regulations, State regulations 9V AC20-80-640 for ACM and 9V AC20-60-261 for LBP must be followed. DEQ also encourages all projects and facilities to implement pollution prevention principles, including the reduction, reuse and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

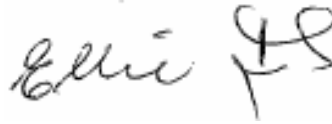
Response to Comment I-III-9:

The BMP guidance document provides national environmentally-based best management practices for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing, that are not highlighted in this document. Furthermore, the above comments pertaining to waste regulations related to asbestos-containing materials and lead-based paints were provided for informational purposes only, rather than to comment specifically on the draft BMP guidance document. For this reason, no further response is necessary.

Draft National Guidance
Docket ID No. OW-2004-0003
Page 4

Thank you for the opportunity to review the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs. Copies of future NEPA or Coastal Zone Management Act documents prepared for sites located in Virginia should be sent to DEQ's Office of Environmental Review for review. For further information, please contact me at (804) 698-4325 or Anne Newsom at (804) 698-4135.

Sincerely,



Ellie Irons
Program Manager
Office of Environmental Impact Review

Enclosures

cc: Michelle Henicheck, DEQ-OWWP&C
John Bowden, DEQ-NRO
Harold Winer, DEQ-TRO
Allen Brockman, DEQ-Waste
Andrew Zadnik, DGIF

MEMORANDUM
DEPARTMENT OF ENVIRONMENTAL QUALITY
Piedmont Regional Office

4949-A Cox Road

Glen Allen, VA 23060

804/527-5020

To: Anne B. Newsom
Environmental Program Planner

From: Susan A. Ridout
DEQ-PRO Environmental Planner

Date: September 27, 2004

Subject: Draft National Guidance: Best Management Practices for Preparing Vessels
Intended to Create Artificial Reefs (04-164F)

I have reviewed the Environmental Impact Review guidance document submitted by the U.S. Environmental Protection Agency concerning the above-mentioned project. The following summarizes my comments:

Comment I-III-10:

DEQ supports the efforts made by EP A to ensure that any adverse environmental impacts generated from the sinking of decommissioned vessels for the creation of artificial reefs are avoided. The national guidance should consider each case individually based on site-specific placement of the vessels.

Response to Comment I-III-10:

The use of the BMP guidance document will help ensure that vessels prepared for use as artificial reefs will be environmentally sound in their use as artificial reefs. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negative impacts to the environment. The narrative clean-up performance goals provided in the BMP guidance document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

The BMP guidance document states that the final preparation plan for any particular artificial reef project is case specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations.

Comment I-III-11:

It is recommended that the vessels used for reef creation to be monitored and managed ensure pollutants do not leak or pose a threat to the surrounding water body.

Response to Comment I-III-11:

Because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats. Properly prepared and strategically sited artificial reefs can enhance fish habitat, provide more access to quality fishing grounds, and provide managers with another option for conserving, managing and/or developing fishery resources.

Though it is beyond the scope of this document to provide details on the monitoring aspects of a given vessel-to-reef project, the final BMP guidance document does mention the importance of planning (including siting), long-term monitoring, and evaluation as necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. Such monitoring and evaluation of a given reef would provide opportunities to maintain the integrity of the reef, as well as the intention of the reef -- which is to not cause harm to existing living marine resources and habitats. The following text will also be included in the final version of the BMP guidance document:

“Project planners should evaluate vessel-to-reef projects and potential sites with regard to chemical and biological conditions as well as long-term durability and stability, as these will affect future habitat value.”

Comment I-III-12:

DEQ-PRO encourages the implementation of pollution prevention principles, including the reduction, reuse and recycling of all waste materials, when possible.

Response to Comment I-III-12:

The final BMP guidance document discusses the preparation of vessels when employing the vessel management option of artificial reefing. The placement of appropriately prepared/cleaned vessels with the intent to create an artificial reef is the “re-use” or “recycling” of the vessel itself. Even as such, reefing of vessels and resource recovery are not mutually exclusive. The BMP guidance document states that some portions of a candidate vessel may be economically salvageable. Salvage activities should allow for resource recovery while also allowing for improved access for subsequent clean-up efforts. In turn the salvage proceeds may help offset some costs for vessel preparation.

MEMORANDUM

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY
Ellen Gilinsky, Ph.D., Director

RECEIVED

SEP 23 2004

DEQ-Office of Environmental
Impact Review

TO: Anne B. Newsom
Office of Environmental Impact Review

FROM: Michelle Henicheck
Office of Wetlands, Water Protection and Compliance

DATE: September 20, 2004

SUBJECT: Guidance Document
Draft National Guidance, Best Management Practices for Preparing Vessels
intended to Create Artificial Reefs, Environmental Protection Agency
04-164F

We have reviewed the information provided concerning the above-referenced project. The purpose of the guidance is to provide national environmentally-based best management practices for preparation of vessels to be sunk with the intention of creating artificial reefs.

Comment I-III-13:

DEQ recommends submitting site-specific information to be reviewed on a case by case basis prior to initiating the proposed activities. Should the size or scope of the project change, additional review may be necessary.

Response to Comment I-III-13:

The final BMP guidance document states that the final preparation plan for any particular artificial reef project is case specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

MEMORANDUM

TO: Anne B. Newsom, Environmental Program Planner

FROM: *ARB* Allen Brockman, Waste Division Environmental Review Coordinator

DATE: September 20, 2004

COPIES: Sanjay Thirunagari, Waste Division Environmental Review Manager; file

SUBJECT: Review of EPA Draft National Guidance: Best Management Practices for Preparing Vessels to Create Artificial Reefs – to assist the Maritime Administration (MARAD) in identifying potential management options for their decommissioned vessel fleet, in Federal Register – August 2, 2004 -- ; DEQ Project Code 04-164F

The Waste Division has completed its review of the EPA Draft National Guidance: Best Management Practices for Preparing Vessels to Create Artificial Reefs in the Federal Register of August 2, 2004. We have the following comments concerning the waste issues associated with this proposed guidance:

Comment I-III-14:

The proposed guidance does not address solid and hazardous waste issues and sites *per se*. All of these issues are addressed from a toxic and hazardous substances perspective, instead. Specifically, state solid waste regulations, the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are not mentioned in the notice (either in the text or in Appendix B). Each of these issues should be addressed in the proposed guidance for the creation of artificial reefs from MARAD ships, given that many of the materials under consideration would likely be interpreted as "wastes" under the definitions in the omitted regulatory citations.

Response to Comment I-III-14:

See *Response to Comment #s J-I-8 and I-III-6*.

Comment I-III-15:

The remaining comments in this memo are presented for informational purposes only. Such state-specific information, as follows, does not need to be included in the proposed guidance for the EPA and MARAD, however this information indicates how the Waste Division would conduct reviews of Artificial Reef-related environmental assessment reports. Therefore, the proposed guidance should address such waste disposal requirements as they generally relate to waste disposal in all states.

Response to Comment I-III-15:

The comment is merely provided for informational purposes only rather than a comment specific to the draft BMP guidance document. For this reason, no response is necessary.

For any MARAD ship disposal/Artificial Reef project, soil or ship-related material that is suspected of contamination, or wastes that are generated in or prior to the disposal process, must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations in Virginia are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste

Management Regulations (VHWMR) (9V AC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9V AC 20-80); Virginia Regulations for the Transportation of Hazardous Materials (9V AC 20-110). Some of the applicable Federal laws and regulations are: RCRA, 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous materials, 49 CFR Parts 107.

Also, ship-related structures to be demolished should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition or disposal. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9V AC 20-80-640 for ACM and 9V AC 20-60-261 for LBP must be followed.

Please note that DEQ encourages all such projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions of need further information, please contact Allen Brockman at (804) 698-4468.

Newsom, Anne

From: Winer, Harold
Sent: Wednesday, September 15, 2004 8:57 AM
To: Newsom, Anne
Cc: Johnston, Milton; Parolari, Bert
Subject: Subject: EIR #04-164F, Draft National Guidance; BMPs For Preparing Vessels To Create Artificial Reefs

As requested, TRO staff have reviewed the supplied information and have the following Comments:

Comment I-III-16:

Regarding Waste issues, the document's premise is that the sinking of ships to create artificial reefs is a beneficial use therefore the sinking of the ship is technically not a discarded material, i.e. waste. They then go on to identify those materials that are not part of the structural integrity of the ship such as oils, PCB's, asbestos, paint etc. and describe where to look for these materials. We did not see anything of concern in their guidance and they repeatedly point the reader to the appropriate regulations. Without being experts on ship construction we can not say whether they covered everything. That being said, if the material is not part of the structure or if it is contaminated, the document states that material can not be allowed to go down with the ship.

Response to Comment I-III-16:

The purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving,

managing, and/or developing fisheries resources. The BMP guidance document describes appropriate vessel preparation that could achieve such benefits as an artificial reef and avoid negatively impacting the environment with pollutants. The narrative clean-up performance goals provided in this document, if implemented and complemented with strategic reef site selection, will maximize the opportunity for these vessels to benefit the environment as artificial reefs.

The placement of appropriately prepared/cleaned vessels with the intent to create an artificial reef is the “re-use” or “recycling” of the vessel. Although the vessel itself is being “re-used” or “recycled,” we note that for purposes of domestic law under TSCA, the sinking of PCBs remaining onboard vessels used as artificial reef is treated as PCB disposal.

This guidance identifies materials or categories of materials of concern that may be found aboard vessels and specifically identifies where they may be found. For each material or category of material, this document provides a narrative clean-up performance goal and information on methods for achieving those goals in preparation of the vessel prior to sinking. Materials of concern include, but are not limited to: oil and fuel, asbestos, polychlorinated biphenyls (PCBs), paint, solids/debris/floatables, and other materials of environmental concern (e.g., mercury and refrigerants).

The narrative clean-up performance goals for the materials of concern highlighted in this guidance should be achieved while preparing a vessel intended for artificial reefing. There are statutory requirements and associated regulations, as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document. These include, but are not limited to, issues such as vessel inspections by appropriate authorities and storage and disposal of waste generated during clean-up/preparation.

Comment I-III-17:

Although the document clearly states where to look for the contamination, it does not go into detail on the operations at the ship breaking/cleaning facility and additional detail needs to be placed on BMP's at those facilities to minimize the release of material during the preparation/decontamination phase.

Response to Comment I-III-17:

The purpose of the BMP guidance document is provide national environmentally-based best management practices for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas. The operations at the ship breaking/cleaning facility are outside the scope of this document.

While the BMP guidance was not designed to address worker safety issues, those with an interest in such safety issues and concerns should consult other relevant documents, such as those prepared by OSHA, State or local safety agencies, and other relevant EPA

documents. For example, EPA's *A Guide for Ship Scrappers – Tips for Regulatory Compliance* presents important information related to environmental and worker safety and health issues for ship scrapping/ship breaking operations when handling specific hazardous materials. This document can be accessed via the World Wide Web at <http://www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf>.

Comment I-III-18:

Concerning VWP issues, this document properly recognizes the need to obtain federal and state permitting authorizations including CWA Section 404 permits and Section 401 State certification. Since this document is proposed to establish National guidance, more specific discussion of individual state issues is probably not warranted.

Response to Comment I-III-18:

Comment noted.

Thanks for the opportunity to comment.

Harold J. Winer
Deputy Regional Director
DEQ, Tidewater Regional Office
Phone – 757-518-2153 FAX -- 757-518-2003
email – hjwiner@deq.virginia.gov

Bowden, John

From: Bowden, John
Sent: Monday, September 20, 2004 3:32 PM
To: Newsom, Anne
Subject: #04-164F

RECEIVED

SEP 22 2004

DEQ-Office of Environmental
Impact Review

NVRO comments on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs project sponsored by the EPA are as follows:

Comment I-III-19:

1. Water Compliance- The document reviewed is a policy guidance document describing best management practices. As such it has no direct environmental impact. VPDES permit coverage is required for any stormwater discharges from land disturbance activities of 1 or more acres. Since no land disturbance activity is involved, stormwater discharges are not applicable. Removal of toxic and/or hazardous substances to the maximum extent practicable should minimize impacts to water quality.

Response to Comment I-III-19:

Comment noted.

Comment I-III-20:

2. Water Permitting-No comments submitted.

3. Waste Compliance- The document does not address the handling and disposal of the waste generated during the preparation of the vessels. A sentence is discussed in the sections on fuel oil and PCB cleanups, but handling and disposal is not mentioned elsewhere. A sentence should be added to the executive summary and to each material of concern that all waste generated during the preparation of the vessels must be stored and disposed of according to the Federal Code of Regulations (40 CFR 260 through 265) and all applicable state regulations.

Response to Comment I-III-20:

See *Response to Comment #s J-I-8 and I-III-6.*

Comment I-III-21:

In addition in Appendix B, *Some Legal Authorities that may Apply to Vessel-to-Reef Projects*, a paragraph should be added to cite the hazardous waste regulations under 40 CFR 261 through 265.

Response to Comment I-III-21:

EPA has revised Appendix B to identify federal statutes that should be considered (including the Comprehensive Environmental Response, Compensation, and Liability Act, as well as the Resource Conservation and Recovery Act), but only for the convenience of the reader.

Under 10 U.S.C. 7306b(c), preparation of a vessel for use as an artificial reef needs to be conducted in accordance with “any applicable environmental laws.” Appendix B provides an overview of the principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef. For these statutes, Appendix B explains their potential applicability and briefly summarizes the relevant provisions. The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of

interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. In addition, State and local laws, which EPA did not attempt to identify in the BMP guidance or Appendix B, also may apply to vessel preparation for use as an artificial reef.

Comment I-III-22:

In the Oil and Fuel Preparation Discussion, a sentence should be added that appropriate spill containment be available during the sinking of the vessels to capture any oil or fuel that appears on the surface. It is understand that it is nearly impossible to remove all of the material that may cause a sheen, but if there is a sheen, then the party responsible for sinking the vessel should be prepared to capture and clean up any residual material.

Response to Comment I-III-22

See Response to Comment # I-III-8.

*John D. Bowden
Deputy Regional Director
Department of Environmental Quality
Northern Virginia Regional Office
(703) 583-3880
jdbowden@deq.virginia.gov*

Newsom, Anne

From: Andy Zadnik [ZadnikA@dgif.state.va.us]
Sent: Tuesday, September 14, 2004 4:34 PM
To: Newsom, Anne
Subject: 04-164F_Draft guidance – BMPs for vessels

We have reviewed the draft guidance for preparing vessels intended to create artificial reefs, and offer the following comments.

Comment I-III-23:

We support the proposed guidance to ensure that prepared vessels are environmentally sound. We also support the current siting guidance, which stipulates that, while artificial reefs can improve local fishery resources. care must be taken to avoid locating a reef where it may adversely impact wildlife resources.

Response to Comment I-III-23:

EPA appreciates the support of the Department of Game and Inland Fisheries.

Thank you for the opportunity to comment on this draft guidance. Please contact me if I can be of further assistance.

Andres K. Zadnik
Environmental Services Section Biologist
Department of Game and Inland Fisheries
4010 West Broad Street
Richmond, VA 23230

(804) 367-2733

(804) 367-2427

Newsom, Anne

RECEIVED

From: Synthia Waymack [Synthia.Waymack@dcr.virginia.gov]
Sent: Monday, September 20, 2004 12:04 PM
To: Newsom, Anne
Subject: Re: DEQ # 04-164F

SEP 20 2004

DEQ-Office of Environmental
Impact Review

Anne,

Thank you for the opportunity to offer comments on BMP draft for preparing vessels for use as artificial reefs.

At this time, we have no comments to offer.

Take Care,
Synthia

Synthia Waymack
Grants Administrator/Environmental Review Coordinator
Department of Conservation and Recreation
Telephone: 804.786.4379
Fax number 804.371.7899
Synthia.Waymack@dcr.virginia.gov<<mailto:Synthia.Waymack@dcr.virginia.gov>>

>>> "Newsom,Anne" abnewsom@deq.virginia.gov 9/17/2004 3:00:54 PM >>>

Reviewers,

The Department of Environmental Quality's Office of Environmental Impact review is finishing its review period for the following project:

Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs
(DEQ # 04-164F)
(comments are due September 21, 2004)

If you would like to participate in the review, I need comments from you. Thank you. If you have any questions, please email me or give me a call.

Anne

Anne Newsom
Department of Environmental Quality
Office of Environmental Impact Review

If you cannot meet the deadline, please notify ANNE B. NEWSOM at 804/698-4135 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for your comments. **IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.**

Please return your comments to:

MS. ANNE B. NEWSOM
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL IMPACT REVIEW
629 EAST MAIN STREET, SIXTH FLOOR
RICHMOND, VA 23219
FAX #804/698-4319


ANNE B. NEWSOM
ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

We have reviewed the Draft National Guidance: BMP's for Preparing Vessels Intended to Create Artificial Reefs and have no comments on the document.

(signed) TABaneau (date) 9/20/04
(title) Marine Scientist
(agency) VIMS

If you cannot meet the deadline, please notify ANNE B. NEWSOM at 804/698-4135 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for your comments. IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.

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OFFICE OF ENVIRONMENTAL IMPACT REVIEW
629 EAST MAIN STREET, SIXTH FLOOR
RICHMOND, VA 23219
FAX #804/698-4319

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SEP 21 2004

DEPT. OF ENVIRONMENTAL
IMPACT REVIEW

ANNE B. NEWSOM
ANNE B. NEWSOM
ENVIRONMENTAL PROGRAM PLANNER

COMMENTS

No comment. The proposed rule does not appear to impact VPA facilities or assets.

(signed) *Shirley T. Adair* (date) *9/17/04*

(title) *Environmental Manager*

(agency) *Virginia Port Authority*

PROJECT #04-164F

8/98



RECEIVED

SEP 16 2004

DEQ Office of Environmental
Impact Review

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ARTHUR L. COLLINS, EXECUTIVE DIRECTOR/SECRETARY

September 14, 2004

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Ms. Anne B. Newsom
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, Virginia 23219

Re: Draft National Guidance: Best
Management Practices for
Preparing Vessels Intended to
Create Artificial Reefs
DEQ #04-164F (ENV:GEN)

Dear Ms. Newsom:

Pursuant to your request of September 1, 2004, the staff of the Hampton Roads Planning District Commission has reviewed Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.

Based on this review, it appears that the proposed guidance provides advice and information without imposing any legally binding requirements on any regulated community. Thus, we have no significant comments to offer.

We appreciate the opportunity to review this document. If you have any questions, please do not hesitate to call.

Sincerely,


Arthur L. Collins
Executive Director/Secretary

MLJ:fh

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0029

Author Date: October 7, 2004

Author: Barry E. Chambers
International Shipbreaking Limited

October 7, 2004

From: Barry E. Chambers
Co-Chief Operating Officer
International Shipbreaking Limited

To: Laura S. Johnson
USEPA/OWOW

Subject: Comments on reefing guidance

Comment # P-1:

1. Fixed Ballast

The guidance implies that lead ballast may remain for salt water reefing. However, a percentage of Navy combat vessel fixed lead ballast is found in fuel tanks and is covered with a sludge residue. It is an uncertain process to assure that all six sides of the lead ballast are properly cleaned because of their tight placement. In this situation, would the bars be subject to removal?

Response to Comment # P-1:

According to the draft BMPs, the narrative clean-up goal for oil and fuel is to “remove liquid hydrocarbons (fuels, oils) and semi-solids (greases) so that: no visible sheen is remaining on the tank surfaces (this includes all interior fittings, piping, structural members) or on the water surface when the equipment is flooded after sinking; no film or visible accumulation (e.g., spills on decking or carpet) is remaining on any vessel structure or component.” The Oil and Fuel Section has a subheading “Fuel and Oil Tanks,” which specifies how fuel and oil tanks should be cleaned/prepared. Appendix F presents suggested cleaning methods for liquid hydrocarbons (fuels, oils) and semi-solids (greases). These clean-up recommendations apply to tank components and parts, including fixed lead ballast. If you cannot clean the fixed lead ballast to meet the narrative clean-up goal, such lead ballast should be removed.

Comment # P-2:

Many cargo vessels were ballasted with drilling mud as a method to convert to carrying containers. Typically this drilling mud will have a TPH above 100 PPM. Will the EPA require the removal of this drilling mud and the subsequent cleaning of the tank?

Response to Comment # P-2:

As stated in the draft BMPs, the aim of hydrocarbon clean-up is to remove liquid hydrocarbons (fuels, oils). Based on your description, the drilling mud would need to be removed due to the presence of petroleum hydrocarbons. The revised narrative clean-up goal for oil and fuel includes the “removal of liquid fuels and oils and semi-solids (greases) so that: no visible sheen is remaining on the tank surfaces (this includes all interior fittings, piping, structural members); no film or visible accumulation is remaining on any vessel structure or component (e.g., on machinery or from spills on decking or carpet). The end result of such clean-up should be that no sheen be visible upon sinking a vessel.” Further, the vessel preparation section of the Oil and Fuel chapter states that tank interiors should be cleaned of all hydrocarbons.

Comment # P-3:

If any “fixed” ballast were to be removed by a contractor, would not the vessel stability have to be recalculated by competent authority before towing and placement for reefing?

Response to Comment # P-3:

As stated in the BMP guidance document, operations associated with salvage, clean-up, and diver access have the potential to adversely impact vessel stability. Failure to consider the impact of these activities on vessel stability before and during scuttling operations could result in premature and uncontrolled capsizing and/or sinking of the vessel. Therefore, vessel stability considerations should be an integral part of the salvage, clean-up, modification (for diver access), transport, and sinking plans of a ship to reef project.

If the vessel’s stability is compromised as a result of vessel cleaning/preparation, the vessel may need to be re-stabilized prior to towing to the sink site. A vessel sink and tow plan would address this issue. Discussions pertaining to vessel sink and tow plans are beyond the scope of the BMP guidance document. The final BMP guidance document states that “this document does not provide information on how to sink a vessel or the required actions or regulatory procedures/processes associated with the act of sinking a vessel.”

Comment # P-4:

2. PCB

In light of the recent findings of the effects of PCB in paint in Lewiston, Montana, does the EPA plan to re-evaluate the effects of PCB paint on artificial reefs?

Response to Comment # P-4:

EPA has no plans to specifically address the effects of paint manufactured with regulated levels of PCBs on artificial reefs. As with other materials manufactured with PCBs ≥ 50 ppm found onboard vessels, paints manufactured with PCBs ≥ 50 ppm will either have to be removed or be addressed as a component of a risk-based disposal approval.

Comment # P-5:

The EPA paint sampling protocol/guidance identifies method 8082, soxlet extraction and toluene as the extraction solvent. Does the EPA continue to “require” that procedure and will that procedure and the extraction solvent be specifically identified in the guidance? My concern is that many labs do not use the soxlet extraction and many more use hexane as an extraction solvent in all matrixes. It is possible that the different lab techniques could cause variations between contractors in the bidding process and also, the various agencies involved in the process.

Response to Comment # P-5:

The PCB regulations do not require sampling or analysis. Even though the regulations do not require testing, the regulations say that the disposal is based on a concentration and that concentration must be from an accurate measurement that would rely on a complete and thorough extraction. EPA has expressed a preference for SW-846 extraction method 3540c (Soxhlet Extraction) using toluene as the extraction solvent instead of hexane or hexane:acetone mixture. Please see response below concerning the Paint Sampling Guidance.

Sampling and analytical methods are not addressed in this guidance. All inquiries regarding sampling and analytical methods for materials containing PCBs should be directed to EPA’s appropriate PCB Regional coordinator. A list of EPA’s current PCB Regional coordinators may be found at www.epa.gov/pcb/coordin.html.

Comment # P-6:

Does the EPA anticipate including the paint sampling and stratum I, II and III guidance in this new reefing guidance to assure consistency in sampling methodology.

Response to Comment # P-6:

EPA did not include the paint sampling and stratum guidance in the final BMP guidance document. Both sampling plans have been superseded by the 1998 PCB Disposal Amendments. These sampling plans were developed in 1995 as part of an enforcement agreement between EPA and MARAD for domestic scrapping but never used. They were designed to assist domestic scrappers in locating materials containing regulated levels of PCBs and require only a minimum amount of samples. They are based on the premise that EPA knew what the final disposal options for both regulated and non-regulated materials would be; final disposal was controlled, while this is not the case with artificial reefing where disposal is not controlled.

The sampling plans rely on best engineering judgment and were developed without supporting data. They have never been tested, used, or verified. There is no data to support or disprove these methods. These sampling plans do not guarantee or provide any sort of confidence level that all regulated materials will be found.

If desired, sampling and analytical plans can be developed as part of an application for a risk-based disposal approval.

Comment # P-7:

Does reefing beyond either the 3 or 12 mile limits with any level of PCB above 50 PPM cause a concern with regard to “export” per 40CFR Part 761 Subchapter F.

Response to Comment # P-7:

Reefing of ships which contain bulk product waste or PCB remediation waste beyond either the 3 or 12 mile limits with PCB does not cause any concern for “export” under 40 C.F.R. part 761 Subchapter F. Due to the nature of artificial reefing activities, it is expected that domestic reefing will occur within the boundary of the outer continental shelf, where EPA has jurisdiction to regulate the disposal of any PCBs as a domestic matter. The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq., extends the jurisdiction of federal laws to “the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed.” 43 U.S.C. § 1331(a)(1). Therefore, EPA does not anticipate that reefing activities will implicate the regulations cited by the commenter.

Comment # P-8:

There was a fairly recent United Nations global treaty, that plans a long-term program to make the world free of PCB by 2028. As I understand, the US has signed the treaty but the Senate has yet to ratify. Does the knowing placement of any PCB in the marine environment cause the EPA concern with regard to this treaty?

Response to Comment # P-8:

The treaty mentioned in the comment would seem to be the Stockholm Convention. The U.S. is a signatory to the Stockholm Convention, but has not yet ratified the treaty. Thus, the U.S. is not legally bound by the various provisions of the Convention. However, as a signatory, under international law the U.S. may not act so as to defeat the object and purposes of the Convention. EPA believes that TSCA PCB approval processes are adequate to effectuate any relevant U.S. obligations under the Stockholm Convention. For further discussion, see *Response to Comment #s O-I-58 and O-I-60*.

Comment # P-9:

3. Non-asbestos insulation

Naval vessels generally contain large quantities of fiberglass insulation throughout the vessel. The center and after houses of cargo vessels will also contain this same type of insulation behind asbestos wallboard. This material will initially float. On naval vessels, the pins holding this insulation will quickly succumb to electrolysis and the material will become free within the vessel. Does the EPA intend to not suggest the removal of floatable fiberglass insulation? .

Response to Comment # P-9:

To address the above comment, EPA revised the draft BMP guidance document as follows:

“Consideration should also be given to the removal of items that could become a floatable over time (e.g., floatable fiberglass insulation, floatable foam).”

Comment # P-10:

Cargo vessels with refrigerated holds may contain “large” quantities of floatable foam behind stainless, aluminum or wood interior barriers. On first glance, the material would appear contained within the vessel. However, electrolysis will quickly attack the fasteners and this material will float, depending on the depth. Does the EPA intend to not suggest the removal of floatable foam insulation in refrigerated spaces?

Response to Comment # P-10:

See *Response to Comment # P-9*.

Comment # P-11:

Naval vessels use a foam insulation on most fire, water and sewage piping. This material is well attached, but is a floatable. Will the EPA not suggest the removal of floatable foam insulation on interior vessel piping?

Response to Comment # P-11:

See *Response to Comment # P-9*.

Comment # P-12:

4. Hydrocarbons

Is “cosmoline” when used as a preservative considered dried grease and not subject to removal? What if the cosmoline were to contain PCB greater than 50 PPM?

Response to Comment # P-12:

Cosmoline is a hydrocarbon semi-solid. As such it should be removed. Per the BMP guidance, the clean-up goal is to remove liquid fuels and oils and semi-solids (greases) so that: no visible sheen is remaining on the tank surfaces (this includes all interior fittings, piping, structural members); no film or visible accumulation is remaining on any vessel structure or component (e.g., on machinery or from spills on decking or carpet). The end result of such clean-up should be that no sheen be visible upon sinking a vessel.

Essentially, the aim of clean-up is to remove liquid fuels, oils, and grease. Although it is impossible to remove all fuels, oils, and grease, a very thorough clean-up is achievable. In general, all liquid fuels and oils and semi-solids (greases) should be drained, flushed, and cleaned from fuel/lube and fluid system equipment (including piping, interior fittings, and structural members) so that no visible sheen remains on the tanks or other associated fluid system structures.

EPA has no information of cosmoline being manufactured with or containing PCBs. If cosmoline is thought to or found to contain ≥ 50 ppm PCBs, it will either have to be removed and disposed of according to the PCB regulations, or be addressed as a component of a risk-based disposal approval.

Comment # P-13:

5. Paint

If exfoliating paint is analyzed for disposal and that paint has failed TCLP for lead and chrome, which is often the case, the remediation contractor will be required to handle that material as a hazardous waste because it has failed a leachate test. Does the EPA not see a contradiction in placing the remaining paint underwater, in a worse environment than a municipal landfill, from which it is banned because of its leachate status?

Response to Comment # P-13:

Removal of intact interior and exterior paints above the waterline generally is not necessary. Topside paint may contain other constituents, such as trace metals or biocides. Unlike underwater hull paint containing high concentrations of biocides designed to leach rapidly, topside paints are designed for long life. They also may contain significantly lower levels of these substances than hull coatings. However, exfoliating paint (paint that is blistering, peeling, and pitting) and exfoliated paint (paint chips and flakes) should be removed.

Comment # P-14:

6. Artificial reef lifespan

It is understood by some diver/marine persons that vessels will degrade and collapse over a period of time. Shallow coastal salt water environments would degrade faster than say, Lake Superior at 600 feet. Naval combat vessels may degrade faster than Marad cargo vessels because of the presence of higher nobility metals. It might be worth evaluating the removal, to the extent possible, of metals with a higher nobility than Steel and Aluminum.

Response to Comment # P-14:

Because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resources, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats.

Though it is beyond the scope of this document to provide details on the monitoring aspects of a given vessel-to-reef project, the BMP guidance document does mention the importance of planning (including siting), long-term monitoring, and evaluation as necessary components of each project to help ensure that the anticipated benefits of artificial reefs are attained. Such monitoring and evaluation of a given reef would provide opportunities to maintain the integrity of the reef. The following text will also be included in the final version of the BMP guidance document:

“Project planners should evaluate vessel-to-reef projects and potential sites with regard to chemical and biological conditions as well as long-term durability and stability, as these will affect future habitat value.”

Appendix A

Federal Register Notice of Availability and Request for Public Comments on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs

Federal Register / Vol. 69, No. 147 / Monday, August 2, 2004 / Notices

46141

diverse representation across sectors and geographic locations, those with the following backgrounds and in the following locations are especially encouraged to apply: Environmental officials from the California state government; environmental officials from the Arizona state government; and non-governmental representatives from the state of Arizona. Other individuals are also welcome to send in nominations and apply themselves.

DATES: Suggested deadline for receiving nominations is August 15, 2004.

Appointments will be made by the Administrator of the Environmental Protection Agency. Appointments are scheduled to be announced in September 2004 in advance of the Board's next meeting, scheduled for October 27–28, 2004.

ADDRESSES: Submit nomination materials to: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA., 94105, T: 415–972–3437, F: 415–947–3537, e-mail koerner.elaine@epa.gov.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA., 94105, T: 415–972–3437, F: 415–947–3537, e-mail koerner.elaine@epa.gov.

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board meets three times each calendar year; locations include Washington, DC, and various locations along the U.S.-Mexico border. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the U.S. side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. Board members typically contribute 10–15 hours per month to the Board's work. The Board membership position is voluntary; travel expenses are covered.

The following criteria will be used to evaluate nominees:

- Residence in one of the four U.S. border states.

- Professional knowledge of, and experience with, environmental infrastructure activities and policy along the U.S.-Mexico border.

- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations.

- Representation of a sector or group that is involved in border region environmental infrastructure.

- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies.

- Willingness to serve a two-year term as an actively-contributing member, with possible re-appointment to a second term.

Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Dated: July 13, 2004.

Elaine M. Koerner,
Designated Federal Officer.

[FR Doc. 04–17503 Filed 7–30–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–7794–3]

Draft National Guidance: Best Management Practices for Preparing Vessels Intended To Create Artificial Reefs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: This notice informs the public of the availability of a guidance document containing information on national environmentally-based best management practices for preparation of vessels to be sunk with the intention of creating artificial reefs. This notice of availability commences a 60-day public comment period on the guidance document. The guidance satisfies the mandate of section 3516 of the National Defense Authorization Act for Fiscal

Year 2004. The guidance was also developed in response to the Maritime Administration's (MARAD) request for the U.S. Environmental Protection Agency (EPA) to assist in identifying potential management options for their decommissioned vessel fleet. The EPA is requesting public comment on this document.

DATES: EPA will accept comments on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs received on or before October 1, 2004.

ADDRESSES: Comments may be submitted electronically, by mail or through hand-delivery/courier. Follow the detailed instructions as provided in Section I.C. of the SUPPLEMENTARY INFORMATION section. Electronic files may be e-mailed to:

OW-Docket@epa.gov. Comments may also be mailed to the Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0003. Instructions for couriers and other hand delivery are provided in Section I.C.3. The Agency will not accept facsimiles (faxes).

FOR FURTHER INFORMATION CONTACT: Laura S. Johnson, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–1273; johnson.laura-s@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those who want to transfer their vessel for reefing, have the capacity to prepare a vessel for reefing, wish to undertake a vessel-to-reef project, or are responsible for managing an artificial reef. Categories and entities interested in today's notice include.

Category	Examples of interested entities
Federal Government ...	Maritime Administration, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Navy, National Oceanic and Atmospheric Administration.
State/Local/ Tribal. Government ...	Governments owning or responsible for artificial reef preparation, placement, and management; coastal communities.

Category	Examples of Interested entities
Industry and General Public.	Shipyards, salvage companies, recreational fishing and scuba diving interests, environmental interest groups.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. **Guidance Document Electronic Access.** To obtain a copy of the guidance document entitled "Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs," please access our Web site at: <http://www.epa.gov/owow/oceans/habitat/artificialreefs> under "Recent Additions."

2. **Federal Register Docket.** EPA has established a public docket for this notice under Docket ID No. OW-2004-0003. The public docket consists of the documents specifically referenced in this notice and other information related to this notice. The public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. To view these materials, we encourage you to call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of \$25.00.

3. **Federal Register Electronic Access.** You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at: <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select "Search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute will not be available for public viewing in EPA's electronic public docket. Copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.2.

For public commenters, it is important to note that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comments contain copyrighted material, information claimed as CBI, or other information whose disclosure is restricted by statute. When EPA identifies comments containing copyrighted material, EPA will provide a reference to that material in the version of the comments that is placed in EPA's electronic public docket. The entire comment, including the copyrighted material, will be available in the public docket.

Comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit My Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comments. Please ensure that your comments are submitted within the specified time period. Comments received after the close of the stated time period will be marked "Late." EPA might not be able to consider late submissions. If you wish to submit information claimed as CBI or information that is otherwise protected by statute, please follow the instructions in Section I.D. Do not use EPA Dockets or e-mail to submit information claimed as CBI or information protected by statute.

1. **Electronically.** If you submit electronic comments as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comments. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comments and allows EPA to contact you in case EPA cannot read your comments due to technical difficulties or needs further information on the substance of your comments. EPA will not edit your comments, and any identifying or contact information provided in the body of a comment will be included as part of the comments that are placed in the public docket, and made available in EPA's electronic public docket. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments.

i. **EPA Dockets.** Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/> and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Search," and then key in Docket ID No. OW-2004-0003. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact

information unless you provide it in the body of your information.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to: *OW-Docket@epa.gov*, Attention Docket ID No. OW-2004-0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comments that are placed in the public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in Section I.C.2. These electronic submissions will be accepted in WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of all comments, enclosures, or references, to the Water Docket, Environmental Protection Agency, Mailcode MC-4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW-2004-0003.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. OW-2004-0003. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.2.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to the EPA Docket Center or through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Mailcode 4504 T, Preparation of Vessels Intended to be Artificial Reefs, 1301 Constitution Ave, NW., Room 7114, EPA West Building, Washington, DC 20004. You may claim information that you submit to EPA as CBI by marking that information CBI (if you submit CBI on disk or CD-ROM, indicate on the outside of the disk or CD-ROM that it contains information claimed as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you use a disk or CD-ROM, mark the outside of the disk or CD-ROM clearly to indicate that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult one of the persons identified in the FOR FURTHER INFORMATION CONTACT section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find these suggestions helpful for preparing your comments:

1. Explain your comments as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that supports your comments.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your comments by the deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and Federal Register citation related to your comments.

II. Background and Today's Action

Options for managing obsolete and decommissioned military and commercial vessels include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The guidance document made available today addresses one of these management options—artificial reef creation—with the intent of promoting a consistent, national approach.

An interagency workgroup, chaired by EPA, was established to develop national environmentally-based best management practices (BMPs) for the preparation of vessels to be sunk with the intention of creating artificial reefs. The workgroup was comprised of representatives from the EPA, U.S. Coast Guard, U.S. Navy, Maritime Administration (MARAD), U.S. Army Corps of Engineers, National Oceanic

and Atmospheric Administration, and the U.S. Fish and Wildlife Service. Workgroup members assisted in the drafting of various sections of the document.

This guidance is required by section 3516 of the National Defense Authorization Act for Fiscal Year 2004 (Act), which amends existing law to require that MARAD and EPA jointly develop guidance recommending environmental BMPs to be used in the preparation of vessels for use as artificial reefs. These BMPs are to serve as national guidance for Federal agencies for the preparation of vessels for use as artificial reefs. The Act provides that the BMPs are to (A) ensure that vessels prepared for use as artificial reefs "will be environmentally sound in their use as artificial reefs," (B) "promote consistent use of such practices nationwide," (C) "provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs," and (D) include measures that will "enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels."

The guidance identifies materials or categories of materials of concern that may be present aboard vessels, indicates where these materials may be found, and describes their potential adverse impacts if released into the marine environment. The materials of concern include: fuels and oil, asbestos, polychlorinated biphenyls (PCBs), paints, debris (e.g., vessel debris, floatables, introduced material), and other materials of environmental concern (e.g., mercury, refrigerants). Because the BMPs described in the guidance are directed at the environmental concerns associated with using vessels as artificial reefs, other sources of information should also be used with regard to preparation of the vessel from a diver safety perspective or for any other potential in-water uses (e.g., breakwaters or other types of barriers).

For each material or category of material of concern identified above, the guidance provides a general performance clean-up goal and information on methods for attaining those clean-up goals in preparation of the vessel prior to sinking. The guidance also includes a description of each material of concern's shipboard use and where it may be found on a vessel, as well as its expected impacts if released into the marine environment.

The guidance describes guidelines for the preparation of vessels in a manner that are intended to ensure that the marine environment will benefit from

their use as an artificial reef. Because strategic siting is an essential component of a successful artificial reef project, the guidance also discusses reef siting.

Dated: July 26, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator, Office of Water.

[FR Doc. 04-17502 Filed 7-30-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, August 4, 2004

July 28, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 4, 2004, which is

scheduled to commence at 9:30 a.m. in Room TW-C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Homeland Security Policy Council	The Homeland Security Policy Council will present a report concerning this year's FCC regulatory, outreach, and partnership initiatives in support of homeland security.
2	Office of Engineering and Technology	<i>Title:</i> Communications Assistance for Law Enforcement Act and Broadband Access and Services (RM-10865). <i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking and Declaratory Ruling concerning the appropriate legal and policy framework of the Communications Assistance for Law Enforcement Act.
3	Office of Engineering and Technology	<i>Title:</i> New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04-35). <i>Summary:</i> The Commission will consider a Report and Order concerning the reporting of service disruptions by providers of telecommunications services.
4	Enforcement	<i>Title:</i> Review of the Emergency Alert System. <i>Summary:</i> The Commission will consider a Notice of Inquiry concerning the examination of the Emergency Alert System as an effective mechanism for warning the American public during an emergency.
5	Wireline Competition	<i>Title:</i> Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02-6). <i>Summary:</i> The Commission will consider a Fifth Report and Order concerning measures to protect against waste, fraud and abuse in the administration of the schools and libraries universal service support mechanism.
6	Wireline Competition	<i>Title:</i> Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147). <i>Summary:</i> The Commission will consider an Order on Reconsideration addressing, in part, petitions filed by BellSouth and SureWest for clarification and/or partial reconsideration of the <i>Triennial Review Order</i> (FCC 03-96).
7	Media	<i>Title:</i> Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 03-15, RM-9832). <i>Summary:</i> The Commission will consider a Report and Order concerning the conversion of the nation's broadcast television system from analog to digital television.
8	Media	<i>Title:</i> Digital Output Protection Technologies and Recording Method Certifications (MB Docket Nos. 04-55, 04-56, 04-57, 04-58, 04-59, 04-60, 04-61, 04-62, 04-63, 04-64, 04-65, 04-66, and 04-68). <i>Summary:</i> The Commission will consider an Order responding to certifications received in response to an initial certification window by which digital output protection technologies and recording methods could be authorized for use and give effect to the Redistribution Control Descriptor set forth in ATSC Standard A/65B (the "flag").
9	Consumer & Governmental Affairs	<i>Title:</i> Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CG Docket No. 04-53); and Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278). <i>Summary:</i> The Commission will consider an Order concerning implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiska, Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the

FCC's Audio/Video Events Web page at <http://www.fcc.gov/realaudio>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these

services call (703) 993-3100 or go to <http://www.capitolconnection.gmu.edu>. Audio and video tapes of this meeting can be purchased from CACI Productions, 14151 Park Meadow Drive, Chantilly, VA 20151, (703) 679-3851.

Appendix B
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Appendix C

National Defense Authorization Act for Fiscal Year 2004

The National Defense Authorization Act for Fiscal Year 2004 (PL 108-136) included two provisions relating to the use of vessels as artificial reefs. One such provision, § 3516 (PL 108-136, Div. C, Title XXXV, § 3516, Nov. 24, 2003, 117 Stat. 1795), amended the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (PL 107-314, Div. C, Title XXXV, § 3504(b), Dec. 2, 2002, 116 Stat. 2754; 16 U.S.C. 1220 note) to read in pertinent part as follows:

Title XXXV – Maritime Administration

Subtitle A – Maritime Administration Reauthorization

***Section 3516. AUTHORITY TO CONVEY OBSOLETE VESSELS
TO UNITED STATES TERRITORIES AND FOREIGN
COUNTRIES FOR REEFING***

(b) Environmental Best Management Practices for Preparing Vessels for Use as Artificial Reefs.—

(1) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs.

(2) The guidance recommending environmental best management practices under paragraph (1) shall be developed in consultation with the heads of other Federal agencies, and State agencies, having an interest in the use of vessels as artificial reefs.

(3) The environmental best management practices under paragraph (1) shall --

(A) include recommended practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs;

(B) promote consistent use of such practices nationwide;

(C) provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs; and

(D) include mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.

(4) The environmental best management practices developed under paragraph (1) shall serve as national guidance for Federal agencies for the preparation of vessels for use as artificial reefs.

(5) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly establish an application process for governments of States, commonwealths, and United States territories and possessions, and foreign governments, for the preparation of vessels for use as artificial reefs, including documentation and certification requirements for that application process.

(6) The Secretary of Transportation shall submit to Congress a report on the environmental best management practices developed under paragraph (1) through the existing ship disposal reporting requirements in section 3502 of Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 1654A-492) [Pub.L. 106-398, Div. C, Title XXXV, § 3502, Oct. 30, 2000, 114 Stat. 1654A-492, which is not classified to the Code]. The report shall describe such practices, and may include such other matters as the Secretary considers appropriate.

The second such provision, § 1013 (PL 108-136, Div. A, Title X, § 1013, Nov. 24, 2003, 117 Stat. 1590), amended Title 10 of the United States Code by adding § 7306b. New § 7306b(a) authorizes the Secretary of the Navy to transfer vessels stricken from the Naval Vessel Register for use as an artificial reef. New § 7306b (c) requires the Secretary of the Navy to ensure that the preparation of a vessel transferred pursuant to 10 U.S.C. § 7306b (a) for use as an artificial reef is conducted in accordance with the environmental best management practices developed pursuant to 16 U.S.C. § 1220 note and applicable environmental laws. The complete text of Section 1013 of the National Defense Authorization Act for Fiscal Year 2004 is as follows:

Title X – General Provisions

Subtitle B – Naval Vessels and Shipyards

***Section 1013. TRANSFER OF VESSELS STRICKEN FROM THE
NAVAL VESSEL REGISTER FOR USE AS ARTIFICIAL REEFS.***

(a) AUTHORITY TO MAKE TRANSFER- Chapter 633 of title 10, United States Code, is amended by inserting after section 7306a the following new section:

Sec. 7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs

(a) AUTHORITY TO MAKE TRANSFER- The Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, for use as provided in subsection (b).

`(b) VESSEL TO BE USED AS ARTIFICIAL REEF- An agreement for the transfer of a vessel under subsection (a) shall require that--

`(1) the recipient use, site, construct, monitor, and manage the vessel only as an artificial reef in accordance with the requirements of the National Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), except that the recipient may use the artificial reef to enhance diving opportunities if that use does not have an adverse effect on fishery resources (as that term is defined in section 2(14) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(14)); and

`(2) the recipient obtain, and bear all responsibility for complying with, applicable Federal, State, interstate, and local permits for using, siting, constructing, monitoring, and managing the vessel as an artificial reef.

`(c) PREPARATION OF VESSEL FOR USE AS ARTIFICIAL REEF- The Secretary shall ensure that the preparation of a vessel transferred under subsection (a) for use as an artificial reef is conducted in accordance with--

`(1) the environmental best management practices developed pursuant to section 3504(b) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314; 16 U.S.C. 1220 note); and

`(2) any applicable environmental laws.

`(d) COST SHARING- The Secretary may share with the recipient of a vessel transferred under subsection (a) any costs associated with transferring the vessel under that subsection, including costs of the preparation of the vessel under subsection (c).

`(e) NO LIMITATION ON NUMBER OF VESSELS TRANSFERABLE TO PARTICULAR RECIPIENT- A State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, may be the recipient of more than one vessel transferred under subsection (a).

`(f) ADDITIONAL TERMS AND CONDITIONS- The Secretary may require such additional terms and conditions in connection with a transfer authorized by subsection (a) as the Secretary considers appropriate.

`(g) CONSTRUCTION- Nothing in this section shall be construed to establish a preference for the use as artificial reefs of vessels stricken from the Naval Vessel Register in lieu of other authorized uses of such vessels, including the domestic scrapping of such vessels, or other disposals of such vessels, under this chapter or other applicable authority.'.

(b) CLERICAL AMENDMENT- The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7306a the following new item:

`7306b. Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs.'.